

75 Am. Jur. 2d Trespass Summary

American Jurisprudence, Second Edition | May 2021 Update

Trespass

Eric C. Surette, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses the law of trespass in its broad aspects, including elements of, and particular conduct constituting, trespass. Also discussed are particular types of trespass, persons liable for trespass, defenses, remedies, damages, criminal liability, and matters of practice and procedure with regard to actions for trespass.

Federal Aspects:

Discussed in this article are federal statutes prohibiting trespassing upon military installations. Federal statutes forbidding trespass upon national forest, park, and other public lands, Indian lands, and nuclear power installations are also briefly mentioned.

Treated Elsewhere:

Abatement of action in trespass, see [Am. Jur. 2d, Abatement, Survival, and Revival § 77](#)

Abortion clinic, trespass against, see [Am. Jur. 2d, Abortion and Birth Control § 113](#)

Adjoining landowners, trespass by landowner or trees and bushes, see [Am. Jur. 2d, Adjoining Landowners §§ 9, 19, 26](#)

Adverse possession rights, effect of divorce or separation on, see [Am. Jur. 2d, Adverse Possession § 173](#)

Admiralty, jurisdiction over trespass claims, see [Am. Jur. 2d, Admiralty § 52](#)

Adverse possession, availability of owner's remedy in trespass as requisite to, see [Am. Jur. 2d, Adverse Possession § 15](#); notice to owner that trespass is occurring, see [Am. Jur. 2d, Adverse Possession § 59](#); stranger's trespass as affecting continuous adverse possession, see [Am. Jur. 2d, Adverse Possession § 85](#)

Animals, trespass by, see [Am. Jur. 2d, Animals §§ 41 to 51, 91 to 97, 106 to 108](#)

Bailments, trespass actions in cases involving, see [Am. Jur. 2d, Bailments §§ 203 to 208](#)

Blasting, trespass by, see [Am. Jur. 2d, Explosions and Explosives § 161](#)

Boundaries, judicial determination in trespass action, see [Am. Jur. 2d, Boundaries § 88](#)

Breach of peace, criminal trespass by, see [Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 10](#)

Cemeteries, right of to maintain trespass action, see [Am. Jur. 2d, Cemeteries §§ 43 to 46](#)

Civil rights provisions on public accommodations, see [Am. Jur. 2d, Civil Rights § 223](#)

Computer system, trespass against, see [Am. Jur. 2d, Computers and the Internet §§ 192 to 195](#)

Cotenants, trespass as remedy between, see [Am. Jur. 2d, Cotenancy and Joint Ownership § 86](#); joint action in trespass against third person, see [Am. Jur. 2d, Cotenancy and Joint Ownership § 108](#)

Cutting of timber as trespass on private lands, see [Am. Jur. 2d, Logs and Timber § 102](#)

Dead bodies, trespass with respect to, see [Am. Jur. 2d, Dead Bodies § 74](#)

Effect of First Amendment on trespassing statutes, see [Am. Jur. 2d, Constitutional Law §§ 545, 563](#)

Ejectment as including an action of trespass for mesne profits, see [Am. Jur. 2d, Ejectment § 49](#)

Eminent domain, award's effect on prior trespass claims, see [Am. Jur. 2d, Eminent Domain § 570](#); trespass as remedy for wrongful taking, see [Am. Jur. 2d, Eminent Domain § 699](#)

Energy company's liability to injured trespassers, see [Am. Jur. 2d, Energy and Power Sources §§ 206, 207, 251, 252](#)

Equity, repeated or continuing trespass as ground for invoking, see [Am. Jur. 2d, Equity § 20](#)

Federal courts, jurisdictional amount in trespass case, see [Am. Jur. 2d, Federal Courts § 970](#)

Ferries, trespass consisting of unauthorized use of land for ferry landing, see [Am. Jur. 2d, Ferries § 26](#)

Gas and oil interests, trespass on, see [Am. Jur. 2d, Gas and Oil §§ 13, 296, 298, 306, 307, 316](#)

Highways, trespass on abutting owners' land, see [Am. Jur. 2d, Highways, Streets, and Bridges § 224](#); trespass by removing trees or shrubs, see [Am. Jur. 2d, Highways, Streets, and Bridges § 226](#); right to travel on adjoining land without committing trespass, see [Am. Jur. 2d, Highways, Streets, and Bridges § 235](#)

Homicide not justified by defense against trespass, see [Am. Jur. 2d, Homicide § 174](#)

Injunctive relief against trespass, generally, see [Am. Jur. 2d, Injunctions §§ 100 to 112](#)

Labor laws, effect on trespass laws, see [Am. Jur. 2d, Labor and Labor Relations § 555](#)

Landlord's option to treat holdover as trespass, see [Am. Jur. 2d, Landlord and Tenant § 275](#); landlord's right to enter and unauthorized entry as trespass, see [Am. Jur. 2d, Landlord and Tenant § 391](#); tenant's remedy in case of landlord's unauthorized entry, see [Am. Jur. 2d, Landlord and Tenant § 435](#); trespass as constituting an eviction, see [Am. Jur. 2d, Landlord and Tenant § 509](#)

Liability for trespass associated with repossession of property subject to security interest, see [Am. Jur. 2d, Secured Transactions §§ 476, 591](#)

Liability in trespass for encroaching fence, see [Am. Jur. 2d, Fences § 5](#)

Liability of employer for independent contractor's work involving trespass, see [Am. Jur. 2d, Independent Contractors § 47](#)

Meaning of trespass in venue statute, see [Am. Jur. 2d, Venue § 27](#)

Mineral claims and rights, trespass to, see [Am. Jur. 2d, Mines and Minerals §§ 395 to 397](#)

Mortgages, trespass actions by parties to, see [Am. Jur. 2d, Mortgages §§ 162, 163](#)

Municipal tort liability for trespass, see [Am. Jur. 2d, Municipal, County, School, and State Tort Liability §§ 308, 320, 352](#)

Negligence distinguished from trespass, see [Am. Jur. 2d, Negligence § 15](#)

Nuisance distinguished from trespass, see [Am. Jur. 2d, Nuisances §§ 4, 5](#)

Pollution cases, recovery based on trespass theory, see [Am. Jur. 2d, Pollution Control § 1915](#)

Possession obtained by trespass as constituting forcible entry, see [Am. Jur. 2d, Forcible Entry and Detainer § 20](#)

Premises liability, duty and liability to trespasser, see [Am. Jur. 2d, Premises Liability §§ 119 to 122, 201 to 221, 268 to 279](#)

Public lands and forests, trespass on, see [Am. Jur. 2d, Public Lands §§ 85, 97](#)

Quiet title actions premised on trespass, see [Am. Jur. 2d, Quieting Title and Determination of Adverse Claims § 28](#)

Railroads, duty to trespasser, see [Am. Jur. 2d, Railroads § 221](#)

Receivers, power to bring action for trespass, see [Am. Jur. 2d, Receivers § 386](#)

Recovery of commingled property in specie without committing trespass, see [Am. Jur. 2d, Accession and Confusion § 18](#)

Remaindermen and reversioners, availability of remedy in trespass to, see [Am. Jur. 2d, Life Tenants and Remaindermen §§ 26, 277](#)

Replevin distinguished from trespass, see [Am. Jur. 2d, Replevin § 5](#)

Restitution of benefits of trespass, see [Am. Jur. 2d, Restitution and Implied Contracts § 20](#)

Right to recover damages for emotional distress caused by trespass to real estate, see [Am. Jur. 2d, Fright, Shock, and Mental Disturbance §§ 20, 21](#)

Trespass as remedy for improper search, see [Am. Jur. 2d, Searches and Seizures § 320](#)

Trespass as remedy for injury to crops, see [Am. Jur. 2d, Crops §§ 57, 64](#)

Trespass as remedy for intrusion into fishing and hunting rights, see [Am. Jur. 2d, Fish, Game, and Wildlife Conservation § 32](#)

Trespass by utility after expiration of franchise, see [Am. Jur. 2d, Franchises from Public Entities § 54](#)

Trespass claims as coming within homestead exemption, see [Am. Jur. 2d, Homestead § 89](#)

Trespass on the case, see [Am. Jur. 2d, Actions §§ 18 to 20](#)

Trespasses involving water and water rights, see [Am. Jur. 2d, Waters §§ 194, 250, 380](#)

Use of airspace by airplane, trespass by, see [Am. Jur. 2d, Aviation § 3](#); unauthorized landing as trespass, see [Am. Jur. 2d, Aviation § 7](#)

Uses of party wall constituting trespass, see [Am. Jur. 2d, Party Walls § 63](#)

Waste distinguished from trespass, see [Am. Jur. 2d, Waste § 4](#)

Zoning, use commenced by trespasser as prior nonconforming use, see [Am. Jur. 2d, Zoning and Planning § 530](#)

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Trespass

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I. General Principles

A. Definition and Nature

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1, 16

A.L.R. Library

A.L.R. Index, Trespass

West's A.L.R. Digest, [Trespass](#)  1, 16

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75 Am. Jur. 2d Trespass § 1

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Trespass

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I. General Principles

A. Definition and Nature

§ 1. Definition of trespass

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West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 54](#) (Instruction to jury—What constitutes trespass)

A trespass is a wrong against the right of possession or entry.¹ Trespass is an unlawful interference with possession of property,² or an injury to possession.³

Stated most simply, trespass is the unauthorized entry upon the land of another.⁴ Although stated variously from state to state, as a general rule, trespass occurs when a person intentionally or negligently intrudes onto or into the property of another.⁵ Another statement provides that trespass is an intentional or unauthorized invasion or use of the property of another.⁶ It is a wrongful interference with the right to the exclusive use and benefit of a property right.⁷ Stated yet another way, trespass claim is generally an intentional or negligent intrusion upon or to the possessory interest in property of another.⁸ The term "intrusion" denotes that a possessor's interest in the exclusive possession of his or her land has been invaded by the presence of a person or thing upon it without the possessor's consent.⁹

Observation:

As a general rule, landowners and tenants have a right to exclude persons from trespassing on private property; the right to exclude persons is a fundamental aspect of private property ownership.¹⁰

Historically, a trespass was an invasion into tangible property that interfered with the right of exclusive possession.¹¹ The term has both a narrow and a broad meaning: the narrow meaning refers to an unlawful entry upon the land of another, while the broad meaning encompasses any unlawful interference with one's person, property, or rights.¹² In the latter sense, "trespass" is an injury to the freehold by a stranger to the land.¹³ Thus, a trespass is not just an unauthorized interference with physical property, but also is an unauthorized interference with one of the rights the property owner holds.¹⁴

Civil trespass exists at common law.¹⁵ Statutory trespass is generally narrower than common law trespass, which can apply to a person who intentionally causes a thing or third person to enter land in the possession of another.¹⁶

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Footnotes

- 1 [Tennant v. Chase Home Finance, LLC, 187 So. 3d 1172 \(Ala. Civ. App. 2015\).](#)
- 2 [Ralphs Grocery Co. v. Victory Consultants, Inc., 17 Cal. App. 5th 245, 225 Cal. Rptr. 3d 305 \(4th Dist. 2017\), as modified, \(Nov. 6, 2017\); Greenpeace, Inc. v. Dow Chemical Co., 97 A.3d 1053 \(D.C. 2014\).](#)
- 3 [Boyce v. Cassese, 941 So. 2d 932 \(Ala. 2006\); County of Santa Clara v. Atlantic Richfield Co., 137 Cal. App. 4th 292, 40 Cal. Rptr. 3d 313 \(6th Dist. 2006\); Bittner v. Huth, 162 Md. App. 745, 876 A.2d 157 \(2005\).](#)
- 4 [North Shore Energy, L.L.C. v. Harkins, 501 S.W.3d 598 \(Tex. 2016\).](#)
- 5 [Hurley v. Port Blakely Tree Farms L.P., 182 Wash. App. 753, 332 P.3d 469 \(Div. 1 2014\).](#)
- 6 [Spanish Lake Restoration, L.L.C. v. Petrodome St. Gabriel II, LLC, 186 So. 3d 230 \(La. Ct. App. 4th Cir. 2016\); Morse v. Colitti, 317 Mich. App. 526, 896 N.W.2d 15 \(2016\); Case v. St. Mary's Bank, 164 N.H. 649, 63 A.3d 1209 \(2013\); Kim v. Commonwealth, 293 Va. 304, 797 S.E.2d 766 \(2017\).](#)
- 7 [Petree v. Department of Transportation, 340 Ga. App. 694, 798 S.E.2d 482 \(2017\).](#)
- 8 [Litz v. Maryland Dept. of Environment, 446 Md. 254, 131 A.3d 923 \(2016\); Christian v. Atlantic Richfield Co., 2015 MT 255, 380 Mont. 495, 358 P.3d 131 \(2015\).](#)
- 9 [Restatement Second, Torts § 158, comment c.](#)
- 10 [Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, 232 Cal. App. 4th 1171, 181 Cal. Rptr. 3d 577 \(5th Dist. 2014\).](#)
- 11 [State v. Olson, 47 Wash. App. 514, 735 P.2d 1362 \(Div. 1 1987\).](#)
- 12 [Fernandes v. Portwine, 56 P.3d 1 \(Alaska 2002\).](#)
- 13 [Keesecker v. Bird, 200 W. Va. 667, 490 S.E.2d 754 \(1997\).](#)
- 14 [Lightning Oil Company v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39 \(Tex. 2017\).](#)
- 15 [Gray v. Berg, 2016 ND 82, 878 N.W.2d 79 \(N.D. 2016\).](#)
- 16 [McLaughlin v. Emera Maine, 2017 ME 232, 175 A.3d 657 \(Me. 2017\).](#)

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75 Am. Jur. 2d Trespass § 2

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I. General Principles

A. Definition and Nature

§ 2. Nature of cause of action for trespass

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1, 16

A trespass action is a cause of action,¹ and an action at law,² based in tort.³ The essence of the action is a violation of possession, not a challenge to title.⁴ Further, trespass is an actionable invasion of a possessor's interest in the exclusive possession of land; it is not an action for damage to the property itself.⁵

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Footnotes

- 1 [Town of Dish v. Atmos Energy Corporation](#), 519 S.W.3d 605 (Tex. 2017).
- 2 [MacWillie v. Southeast Alabama Gas Dist.](#), 539 So. 2d 245 (Ala. 1989); [Butler v. Lindsey](#), 293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987).
- 3 [Hirstius v. BellSouth Telecommunications, Inc.](#), 123 So. 3d 276 (La. Ct. App. 1st Cir. 2013), writ denied, 131 So. 3d 868 (La. 2014); [Tibert v. Slominski](#), 2005 ND 34, 692 N.W.2d 133 (N.D. 2005) (common law tort); [Gakin v. City of Rapid City](#), 2005 SD 68, 698 N.W.2d 493 (S.D. 2005).
- 4 [AmSouth Bank, N.A. v. City of Mobile](#), 500 So. 2d 1072 (Ala. 1986); [Hostler v. Green Park Development Co.](#), 986 S.W.2d 500 (Mo. Ct. App. E.D. 1999).
- 5 [Goodwin v. Kingsmen Plastering, Inc.](#), 359 Or. 694, 375 P.3d 463 (2016).

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75 Am. Jur. 2d Trespass § 3

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I. General Principles

A. Definition and Nature

§ 3. Relationship of trespass to condemnation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1, 16

Generally, where a landowner suffers specific damage to his or her property as a result of the negligent acts of a party with the power of eminent domain, the proper action lies in trespass.¹ However, where the damages amount to a de facto taking that deprives a landowner of the use or access to his or her property, a landowner's exclusive remedy lies in eminent domain.² In determining whether a particular action is an exercise of eminent domain or trespass, courts must focus upon the nature of the acts complained of, the nature of the damages, and whether they constitute a de facto taking or are reparable; if the damage flows from some tortious act, the injured party must proceed in trespass.³ Although there is no bright line that distinguishes a continuing trespass from an inverse condemnation,⁴ a cause of action alleging trespass is distinguishable from cause of action alleging a de facto taking, since trespass may be temporary in nature, whereas a de facto taking is permanent.⁵ In certain states, if property owners elect to sue for common law damages resulting from an excessive use of an easement by an entity otherwise entitled to exercise the power of eminent domain, they may sue for trespass or, alternatively, for inverse condemnation.⁶

Observation:

It has been noted that an entry cannot be both a trespass and a taking, because a condemnor acquires ownership.⁷

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Footnotes

- 1 [In re Com., Dept. of Transp., 137 A.3d 666 \(Pa. Commw. Ct. 2016\).](#)
[As to whether trespass is a remedy for a wrongful taking, see Am. Jur. 2d, Eminent Domain § 699.](#)
- 2 [In re Com., Dept. of Transp., 137 A.3d 666 \(Pa. Commw. Ct. 2016\).](#)
[As to inverse condemnation, generally, see Am. Jur. 2d, Eminent Domain § 684.](#)
- 3 [In re Com., Dept. of Transp., 137 A.3d 666 \(Pa. Commw. Ct. 2016\).](#)
- 4 [FMC Co. v. Driscoll, 56 Misc. 3d 638, 56 N.Y.S.3d 778 \(Sup 2017\).](#)
[As to continuing trespasses, see § 21.](#)
- 5 [Volunteer Fire Ass'n of Tappan, Inc. v. County of Rockland, 101 A.D.3d 853, 956 N.Y.S.2d 102 \(2d Dep't 2012\).](#)
- 6 [Barfield v. Sho-Me Power Electric Cooperative, 852 F.3d 795 \(8th Cir. 2017\) \(applying Missouri law\).](#)
- 7 [Feder v. Village of Monroe, 283 A.D.2d 548, 725 N.Y.S.2d 75 \(2d Dep't 2001\).](#)

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75 Am. Jur. 2d Trespass § 4

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I. General Principles

A. Definition and Nature

§ 4. Trespass distinguished from nuisance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1

Trespass and nuisance are related claims focusing on the invasion of a property interest.¹ A trespass generally involves a wrongful act that interferes with an owner's right to the exclusive use and enjoyment of his or her property, while a nuisance, on the other hand, may result from an act that is itself legal, but which nevertheless causes damage to the property of another.² Thus, unlike a trespass, which is inherently unlawful, private nuisance flows from the consequences of an otherwise lawful act.³ Further, strictly speaking, an actionable invasion of a possessor's interest in the exclusive possession of land is a trespass, whereas an actionable invasion of a possessor's interest in the use and enjoyment of his or her land is a nuisance.⁴ The distinction between trespass and nuisance is important due to the extra protection needed for the right of exclusive possession.⁵

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Footnotes

- 1 [Donner v. Blue](#), 187 Wash. App. 51, 347 P.3d 881 (Div. 1 2015).
- 2 [Petree v. Department of Transportation](#), 340 Ga. App. 694, 798 S.E.2d 482 (2017).
- 3 [Georgia-Pacific Consumer Products, LP v. Ratner](#), 345 Ga. App. 434, 812 S.E.2d 120 (2018); [Liberty Place Retail Associates, L.P. v. Israelite School of Universal Practical Knowledge](#), 2014 PA Super 233, 102 A.3d 501 (2014).
- 4 [McBride v. Smith](#), 18 Cal. App. 5th 1160, 227 Cal. Rptr. 3d 390 (1st Dist. 2018); [Gibson v. Morris](#), 270 Or. App. 608, 348 P.3d 1180 (2015).
- 5 [Babb v. Lee County Landfill SC, LLC](#), 405 S.C. 129, 747 S.E.2d 468 (2013).

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I. General Principles

B. Generally, Applicable Elements

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Research References

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1 to 3

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75 Am. Jur. 2d Trespass § 5

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I. General Principles

B. Generally, Applicable Elements

1. In General

§ 5. Affirmative act interfering with possessory rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1

Trespass is a direct physical interference with,¹ or an unlawful or unauthorized physical invasion of,² another's property. The character of the defendant's act in causing an intrusion upon the plaintiff's interest in the exclusive possession of the premises is an element.³ The plaintiff must allege an actual interference with the party's exclusive possession of land.⁴ Trespass is not based on a mere nonfeasance or an omission to perform a duty,⁵ as there must be an affirmative act⁶ or a misfeasance.⁷ Unless accompanied by some positive act, language alone, however offensive, does not constitute a trespass.⁸

Comment:

Tort liability is never imposed upon one who has neither done an act nor failed to perform a duty, and thus, one whose presence on the land is not caused by any act of one's own or a failure to perform a duty is not a trespasser.⁹

In cases of criminal trespass on school grounds, affirmative acts of disturbance are not required to constitute conduct that interferes with the peaceful conduct of the school activities; it is sufficient if the defendant's presence on school grounds interfered with the peaceful conduct of or disturbed school activities.¹⁰

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Footnotes

- 1 [Philips v. Citimortgage, Inc.](#), 430 S.W.3d 324 (Mo. Ct. App. E.D. 2014).
- 2 [Cross v. Western Waste Industries](#), 2015 Ark. App. 476, 469 S.W.3d 820 (2015); [Spanish Lake Restoration, L.L.C. v. Petrodome St. Gabriel II, LLC](#), 186 So. 3d 230 (La. Ct. App. 4th Cir. 2016).
As to the requirement that the invasion be physical and tangible, see § 29.
- 3 [Ford v. Baltimore City Sheriff's Office](#), 149 Md. App. 107, 814 A.2d 127 (2002); [Wallace v. Lewis County](#), 134 Wash. App. 1, 137 P.3d 101 (Div. 2 2006), as corrected, (Aug. 15, 2006).
As to elements of trespass to a chattel, generally, see §§ 13 to 19.
As to elements of trespass to real property, generally, see §§ 22 to 38.
- 4 [Freeman v. Grain Processing Corp.](#), 848 N.W.2d 58 (Iowa 2014); [Schuman v. Greenbelt Homes, Inc.](#), 212 Md. App. 451, 69 A.3d 512 (2013).
As to the complaint in an action for trespass, generally, see § 182.
- 5 [Graham v. Town of Latta, South Carolina](#), 417 S.C. 164, 789 S.E.2d 71 (Ct. App. 2016), cert. denied, (Sept. 8, 2017).
- 6 [Gray v. Berg](#), 2016 ND 82, 878 N.W.2d 79 (N.D. 2016); [Graham v. Town of Latta, South Carolina](#), 417 S.C. 164, 789 S.E.2d 71 (Ct. App. 2016), cert. denied, (Sept. 8, 2017).
Failure to act is affiliated with a negligence claim and does not support the intentional act needed for trespass.
[Jackass Mt. Ranch, Inc. v. South Columbia Basin Irr. Dist.](#), 175 Wash. App. 374, 305 P.3d 1108 (Div. 3 2013).
- 7 [Alabama Power Co. v. Thompson](#), 278 Ala. 367, 178 So. 2d 525 (1965).
- 8 [Alabama Power Co. v. Thompson](#), 278 Ala. 367, 178 So. 2d 525 (1965).
Landowners allegedly sending anonymous threatening letters and shouting at an adjacent landowner, who was claiming adverse ownership of some property, did not constitute "trespass." [Trask v. Nozisko](#), 134 P.3d 544 (Colo. App. 2006).
- 9 [Restatement Second, Torts § 158](#), comment f.
- 10 [In re Jimi A.](#), 209 Cal. App. 3d 482, 257 Cal. Rptr. 147, 52 Ed. Law Rep. 670 (4th Dist. 1989).
As to school trespass statutes, generally, see § 170.

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75 Am. Jur. 2d Trespass § 6

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I. General Principles

B. Generally, Applicable Elements

1. In General

§ 6. Causation as element of trespass

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West's Key Number Digest

West's Key Number Digest, [Trespass](#)  2

Causation is an essential element of trespass.¹ To establish proximate cause in a claim for trespass, a plaintiff must show a legally attributable causal connection between the defendant's conduct and the alleged injury.² The law of trespass requires a physical invasion of a plaintiff's real property that is caused by a defendant and results in damages.³

In at least one state a reasonable foreseeability that an act would disturb the plaintiff's possessory interest is an element of trespass.⁴

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Footnotes

- 1 [Terry v. Catherall](#), 337 Ga. App. 902, 789 S.E.2d 218 (2016).
- 2 [Stroud v. Hall County](#)., 339 Ga. App. 37, 793 S.E.2d 104 (2016).
- 3 [Cross v. Western Waste Industries](#), 2015 Ark. App. 476, 469 S.W.3d 820 (2015).
- 4 [Ofuasia v. Smurr](#), 198 Wash. App. 133, 392 P.3d 1148 (Div. 2 2017).

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75 Am. Jur. 2d Trespass § 7

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B. Generally, Applicable Elements

1. In General

§ 7. Force as element of trespass

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West's Key Number Digest

West's Key Number Digest, [Trespass](#)  3

Trespass traditionally involves the idea of force.¹ The trespass must be the immediate result of force originally applied by the defendant.² However, that force is not confined to actual violent force.³ Any entry on land in the possession of another is deemed a trespass, without regard to the amount of force used.⁴ Furthermore, a trespass may result from indirect force.⁵ One who sets in motion a force that, in the usual course of events, will damage another's property is liable for trespass.⁶

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Footnotes

- 1 [Frye v. Baskin](#), 241 Mo. App. 319, 231 S.W.2d 630 (1950).
- 2 [Alabama Power Co. v. Thompson](#), 278 Ala. 367, 178 So. 2d 525 (1965); [Mitchell v. Baltimore Sun Co.](#), 164 Md. App. 497, 883 A.2d 1008 (2005); [Frye v. Baskin](#), 241 Mo. App. 319, 231 S.W.2d 630 (1950).
- 3 [Checkley v. Illinois Cent. R. Co.](#), 257 Ill. 491, 100 N.E. 942 (1913).
- 4 [Philips v. Citimortgage, Inc.](#), 430 S.W.3d 324 (Mo. Ct. App. E.D. 2014).
- 5 [AmSouth Bank, N.A. v. City of Mobile](#), 500 So. 2d 1072 (Ala. 1986) (recognizing rule).
As to indirect force as an element of trespass to real property, see [§ 28](#).
- 6 [Hoery v. U.S.](#), 64 P.3d 214 (Colo. 2003).

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75 Am. Jur. 2d Trespass § 8

American Jurisprudence, Second Edition | May 2021 Update

Trespass

Eric C. Surette, J.D.

I. General Principles

B. Generally, Applicable Elements

1. In General

§ 8. Injury or harm as element of trespass

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1

The character and extent of the harm visited on the plaintiff in the interference with that person's interest in the exclusive possession of the premises are among the components of the tort of trespass.¹

However, because the legal harm is the interference with another's right to exclusive possession of property, an unauthorized tangible presence on the property of another constitutes a trespass regardless of whether the intrusion caused any other harm.² Property rights are protected by a legal presumption of harm, and thus, a trespass on a right of property is actionable upon any physical invasion of it, regardless of whether the invasion causes measurable damages.³ Actual harm therefore occurs in every trespass,⁴ as trespass occurs whenever a property interest is invaded.⁵ However, the plaintiff need not separately prove actual harm to recover damages for trespass.⁶

Observation:

However, it is generally held that actual injury must have occurred to the chattel or the plaintiff's rights in it for a trespass to chattels to be actionable,⁷ and there is some authority that an intrusion on land must be substantial and result in harm.⁸

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Footnotes

- 1 [Martin v. Reynolds Metals Co.](#), 221 Or. 86, 342 P.2d 790 (1959).
As to continuing harm, resulting from a single trespass as distinct from a continuing trespass, see § 21.
- 2 [Davis v. Westphal](#), 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
There may be an injury even though no harm is done, in the sense that an unauthorized intrusion upon land in the possession of another is an injury, even though the intrusion is beneficial, or so transitory that it does not constitute an interference. [Restatement Second, Torts § 7](#), comment a.
- 3 [InnoSys, Inc. v. Mercer](#), 2015 UT 80, 364 P.3d 1013 (Utah 2015).
- 4 [Movrich v. Lobermeier](#), 2018 WI 9, 379 Wis. 2d 269, 905 N.W.2d 807 (2018).
- 5 [Chicago Title Land Trust Co. v. JS II, LLC](#), 2012 IL App (1st) 63420, 364 Ill. Dec. 709, 977 N.E.2d 198 (App. Ct. 1st Dist. 2012).
- 6 [Chicago Title Land Trust Co. v. JS II, LLC](#), 2012 IL App (1st) 63420, 364 Ill. Dec. 709, 977 N.E.2d 198 (App. Ct. 1st Dist. 2012); [Johnson v. Paynesville Farmers Union Co-op. Oil Co.](#), 817 N.W.2d 693 (Minn. 2012); [Martin v. Artis](#), 2012 MT 249, 366 Mont. 513, 290 P.3d 687 (2012).
- 7 § 19.
- 8 § 27.

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75 Am. Jur. 2d Trespass § 9

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Trespass

Eric C. Surette, J.D.

I. General Principles

B. Generally, Applicable Elements

2. Intent Required for Trespass

§ 9. Intent required for trespass, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  2

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 52](#) (Instruction to jury—Willful trespasser)

Generally, trespass consists of an intentional invasion of the property of another.¹ The trespass must be intentional,² in the sense of an act voluntarily done³ or that the person intended the intrusion,⁴ except where the intrusion results from reckless or negligent conduct or abnormally dangerous activities.⁵ While civil trespass is an intentional tort, intentional trespass does not require proof of specific intent.⁶ The controlling issue is the intent to complete the physical act,⁷ and liability for trespass exists whether or not the trespass was done in good faith and with reasonable care.⁸ It is not necessary that the trespasser intend to invade the property,⁹ commit a trespass,¹⁰ or even know that the act will constitute one,¹¹ as liability for trespass requires only an intent to do the act that itself constitutes, or inevitably causes, the intrusion.¹² Intent may accordingly be shown by proof that while the actor did not know that his or her conduct would result in a trespass, those actions were practically certain to have that effect.¹³

Conduct may be intentional, in the context of a trespass claim, when there is a continuing intrusion known to the intruder that he or she allows to persist, even if the intruder did not know that an invasion would result at the time the acts setting in motion the invasion were done.¹⁴

Under a statute prohibiting trespass and establishing liability for a defendant's conduct, the requirement that the defendant act "wrongfully" means that the defendant knew or had reason to know that he or she lacked authorization to act.¹⁵

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Footnotes

- 1 [Soo Line Railroad Company v. Werner Enterprises](#), 825 F.3d 413 (8th Cir. 2016), cert. denied, 137 S. Ct. 1224, 197 L. Ed. 2d 477 (2017) (applying Minnesota law); [Congregation B'nai Jehuda v. Hiye Realty Corp.](#), 35 A.D.3d 311, 827 N.Y.S.2d 42 (1st Dep't 2006); [Hawkins v. City of Greenville](#), 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).
- 2 [As to the requisite intent to commit a trespass to chattel](#), see §§ 17, 18, and to real property, see §§ 23, 24. [Ralphs Grocery Co. v. Victory Consultants, Inc.](#), 17 Cal. App. 5th 245, 225 Cal. Rptr. 3d 305 (4th Dist. 2017), as modified, (Nov. 6, 2017); [Geiger v. Carey](#), 170 Conn. App. 459, 154 A.3d 1093 (2017); [Davis v. Westphal](#), 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017); [Graham v. Town of Latta](#), South Carolina, 417 S.C. 164, 789 S.E.2d 71 (Ct. App. 2016), cert. denied, (Sept. 8, 2017); [Ofuasia v. Smurr](#), 198 Wash. App. 133, 392 P.3d 1148 (Div. 2 2017).
- 3 [Shevlin-Carpenter Co. v. State of Minn.](#), 218 U.S. 57, 30 S. Ct. 663, 54 L. Ed. 930 (1910); [Lanier v. Burnette](#), 245 Ga. App. 566, 538 S.E.2d 476 (2000); [Garner v. Kovalak](#), 817 N.E.2d 311 (Ind. Ct. App. 2004); [Baltimore Gas and Elec. Co. v. Flippo](#), 112 Md. App. 75, 684 A.2d 456 (1996), judgment aff'd, 348 Md. 680, 705 A.2d 1144 (1998).
- 4 [Davis v. Westphal](#), 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017); [Brown v. Arcady Realty Corp.](#), 1 A.D.3d 753, 769 N.Y.S.2d 606 (3d Dep't 2003).
- 5 § 12.
- 6 [Davis v. Westphal](#), 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
- 7 [Cleveland Park Club v. Perry](#), 165 A.2d 485 (Mun. Ct. App. D.C. 1960).
- 8 [Mishler v. State](#), 660 N.E.2d 343 (Ind. Ct. App. 1996); [Bellinger v. Lindsey](#), 480 S.W.3d 345 (Mo. Ct. App. E.D. 2015).
- 9 [Thomas v. City of Kansas City](#), 92 S.W.3d 92 (Mo. Ct. App. W.D. 2002).
- 10 [Peasley Transfer & Storage Co. v. Smith](#), 132 Idaho 732, 979 P.2d 605 (1999); [Garner v. Kovalak](#), 817 N.E.2d 311 (Ind. Ct. App. 2004).
- 11 [Garner v. Kovalak](#), 817 N.E.2d 311 (Ind. Ct. App. 2004); [Thornton v. Northeast Harris County MUD 1](#), 447 S.W.3d 23 (Tex. App. Houston 14th Dist. 2014).
- 12 [Wal-Mart Stores, Inc. v. United Food and Commercial Workers International Union](#), 2016 COA 72, 382 P.3d 1249 (Colo. App. 2016), cert. denied, 2016 WL 5723926 (Colo. 2016); [Ivory v. International Business Machines Corp.](#), 116 A.D.3d 121, 983 N.Y.S.2d 110 (3d Dep't 2014).
- 13 [Thornton v. Northeast Harris County MUD 1](#), 447 S.W.3d 23 (Tex. App. Houston 14th Dist. 2014); [Hurley v. Port Blakely Tree Farms L.P.](#), 182 Wash. App. 753, 332 P.3d 469 (Div. 1 2014).
- 14 [Gibson v. Morris](#), 270 Or. App. 608, 348 P.3d 1180 (2015).
- 15 [Ofuasia v. Smurr](#), 198 Wash. App. 133, 392 P.3d 1148 (Div. 2 2017).

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75 Am. Jur. 2d Trespass § 10

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Trespass

Eric C. Surette, J.D.

I. General Principles

B. Generally, Applicable Elements

2. Intent Required for Trespass

§ 10. Intent to cause injury as necessary for trespass

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  2

While reasonable foreseeability that an act would disturb the plaintiff's possessory interest may be an element of trespass,¹ a trespasser need not foresee the specific injury,² and a trespasser is not required to have intended or expected the damaging consequence of its intrusion, but it must intend the act which amounts to or produces the unlawful invasion.³ In other words, "intentional" is used in this context to mean that the acts setting in motion the invasion were done with knowledge that a trespass would result and not that the acts were done for the specific purpose of causing a trespass or injury.⁴ Since the intent to complete the physical act is all that is required, the lack of intent to produce its serious consequences is irrelevant.⁵ However, it also has been stated that the word "intent," as used in conjunction with an action for trespass, denotes that the actor desires to cause certain consequences or believes that the consequences are substantially certain to result from it.⁶

An actor is liable if an act causes injury as its immediate consequence, whether intentional or unintentional.⁷ It is not essential that the defendant act with a design, if the injury is the immediate result of the force applied and the plaintiff is damaged as a result.⁸

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Footnotes

¹ [Ofuasias v. Smurr](#), 198 Wash. App. 133, 392 P.3d 1148 (Div. 2 2017).

As to causation, see § 6.

² [State v. Fermenta ASC Corp.](#), 238 A.D.2d 400, 656 N.Y.S.2d 342 (2d Dep't 1997).

- 3 In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation, 725 F.3d 65 (2d Cir. 2013) (applying
New York law).
- 4 Gibson v. Morris, 270 Or. App. 608, 348 P.3d 1180 (2015).
- 5 Cleveland Park Club v. Perry, 165 A.2d 485 (Mun. Ct. App. D.C. 1960).
- 6 Branstetter v. Beaumont Supper Club, Inc., 224 Mont. 20, 727 P.2d 933 (1986).
- 7 Lightner Mining Co. v. Lane, 161 Cal. 689, 120 P. 771 (1911).
- 8 Letterman v. English Mica Co., 249 N.C. 769, 107 S.E.2d 753 (1959).
- As to whether force is an element of trespass, see § 7.

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75 Am. Jur. 2d Trespass § 11

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Trespass

Eric C. Surette, J.D.

I. General Principles

B. Generally, Applicable Elements

2. Intent Required for Trespass

§ 11. Effect of mistake of law or fact on intent necessary for trespass

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  2

A party is liable in trespass even though one acts under a mistaken belief of law¹ or fact,² however reasonable,³ unless the trespass was induced by the possessor's conduct.⁴

A trespass is an intentional tort in the sense that it involves an intent to commit an act that violates a property right, or would be practically certain to have that effect, although the actor may not know that the act would have that effect.⁵ Thus, a defendant is liable for an intentional entry although that person has acted in good faith⁶ under the reasonable but mistaken belief that he or she is committing no wrong,⁷ or where the defendant had a bona fide belief regarding the right to enter,⁸ such as where a trespasser may honestly believe that, under the known facts, he or she has a good title.⁹ Alleged reliance on the advice of counsel in mistakenly concluding that one is entitled to enter the property does not avoid liability for trespass.¹⁰ Ignorance does not excuse an entry upon the land of another.¹¹ However, some jurisdictions recognize the doctrine of the "innocent trespasser," which protects individuals who enter the land of another under the mistaken belief that it is permissible to do so,¹² and either relieves such a person of liability for an unintentional and nonnegligent entry, even though the entry causes harm,¹³ or affects the measure of damages.¹⁴

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Footnotes

- 1 Miller v. National Broadcasting Co., 187 Cal. App. 3d 1463, 232 Cal. Rptr. 668, 69 A.L.R.4th 1027 (2d
Dist. 1986); Bellinger v. Lindsey, 480 S.W.3d 345 (Mo. Ct. App. E.D. 2015); Gordon Creek Tree Farms,
Inc. v. Layne, 230 Or. 204, 368 P.2d 737 (1962).
- 2 Bellinger v. Lindsey, 480 S.W.3d 345 (Mo. Ct. App. E.D. 2015); Gordon Creek Tree Farms, Inc. v. Layne,
230 Or. 204, 368 P.2d 737 (1962).
- As to consent based on a substantial mistake of fact invalidating it as a defense to trespass, see § 79.
- 3 Miller v. National Broadcasting Co., 187 Cal. App. 3d 1463, 232 Cal. Rptr. 668, 69 A.L.R.4th 1027 (2d Dist.
1986); Cockrell v. Pleasant Valley Baptist Church, 762 S.W.2d 879 (Mo. Ct. App. E.D. 1989).
- 4 Restatement Second, Torts § 164.
- 5 General Tel. Co. of Southwest v. Bi-Co Pavers, Inc., 514 S.W.2d 168, 73 A.L.R.3d 978 (Tex. Civ. App.
Dallas 1974).
- 6 Miller v. National Broadcasting Co., 187 Cal. App. 3d 1463, 232 Cal. Rptr. 668, 69 A.L.R.4th 1027 (2d Dist.
1986); Hostler v. Green Park Development Co., 986 S.W.2d 500 (Mo. Ct. App. E.D. 1999).
- 7 Miller v. National Broadcasting Co., 187 Cal. App. 3d 1463, 232 Cal. Rptr. 668, 69 A.L.R.4th 1027 (2d
Dist. 1986).
- 8 Marone v. Kally, 109 A.D.3d 880, 971 N.Y.S.2d 324 (2d Dep't 2013); Miller v. Brooks, 123 N.C. App. 20,
472 S.E.2d 350 (1996).
- 9 Brown Jug, Inc. v. International Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of America,
Local 959, 688 P.2d 932 (Alaska 1984); Davis v. Westphal, 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
Restatement Second, Torts § 164, comment a.
- 10 Miller v. Brooks, 123 N.C. App. 20, 472 S.E.2d 350 (1996).
- 11 Little Pittsburg Consol. Min. Co. v. Little Chief Consol. Min. Co., 11 Colo. 223, 17 P. 760 (1888); Boulton
v. Telfer, 52 Idaho 185, 12 P.2d 767, 83 A.L.R. 1341 (1932); J.F. Ball & Bro. Lumber Co. v. Simms Lumber
Co., 121 La. 627, 46 So. 674 (1908).
- 12 Bullard v. Boulter, 272 Ga. App. 397, 612 S.E.2d 513 (2005); Bryan v. Big Two Mile Gas Co., 213 W. Va.
110, 577 S.E.2d 258 (2001).
- 13 Bullard v. Boulter, 272 Ga. App. 397, 612 S.E.2d 513 (2005).
- 14 Bryan v. Big Two Mile Gas Co., 213 W. Va. 110, 577 S.E.2d 258 (2001).
- As to the measure of damages for the removal of minerals, including by a willful trespasser, see Am. Jur.
2d, Mines and Minerals §§ 437, 438.

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75 Am. Jur. 2d Trespass § 12

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Trespass

Eric C. Surette, J.D.

I. General Principles

B. Generally, Applicable Elements

2. Intent Required for Trespass

§ 12. Reckless, negligent, or ultrahazardous conduct as supporting trespass

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  2

Recklessness, negligence, or engaging in an ultrahazardous activity may result in a trespass,¹ regardless of whether the trespass was unintentional.² However, some courts do not recognize a claim of trespass based on negligence.³

Observation:

Trespass is not an appropriate theory of liability with regard to a defendant's abnormally dangerous generation of hazardous waste⁴ or the deliberate burning of an open field.⁵

Negligent trespass requires proof of a duty, breach of that duty, injury, and proximate cause.⁶ Trespass is generally not a strict liability tort, unless it involves an ultrahazardous activity.⁷ Conversely, there is authority that where a trespass results in damage, the trespasser is liable without reference to negligence or due care.⁸

Footnotes

- 1 Parks Hiway Enterprises, LLC v. CEM Leasing, Inc., 995 P.2d 657, 40 U.C.C. Rep. Serv. 2d 678 (Alaska 2000); Ralphs Grocery Co. v. Victory Consultants, Inc., 17 Cal. App. 5th 245, 225 Cal. Rptr. 3d 305 (4th Dist. 2017), as modified, (Nov. 6, 2017) (reckless or negligent); Lyons v. State Farm Fire and Cas. Co., 349 Ill. App. 3d 404, 285 Ill. Dec. 231, 811 N.E.2d 718 (5th Dist. 2004); Penix v. Delong, 473 S.W.3d 609 (Ky. 2015) (reckless); Mitchell v. Baltimore Sun Co., 164 Md. App. 497, 883 A.2d 1008 (2005); Gibson v. Morris, 270 Or. App. 608, 348 P.3d 1180 (2015) (negligence or ultrahazardous activity).
- 2 Hudson v. Peavey Oil Co., 279 Or. 3, 566 P.2d 175 (1977).
- 3 Lawrence v. Buena Vista Sanitation Dist., 989 P.2d 254 (Colo. App. 1999).
- 4 Jersey City Redevelopment Authority v. PPG Industries, 655 F. Supp. 1257 (D.N.J. 1987) (absolute liability is the preferred theory of liability).
- 5 Koos v. Roth, 55 Or. App. 12, 637 P.2d 167 (1981), decision aff'd, 293 Or. 670, 652 P.2d 1255 (1982).
- 6 Pruitt v. Douglas County, 116 Wash. App. 547, 66 P.3d 1111 (Div. 3 2003).
Plaintiffs may prevail on a claim for negligent trespass by showing that, when the defendants acted, they should have known the intrusion would result. Gibson v. Morris, 270 Or. App. 608, 348 P.3d 1180 (2015).
- 7 Ross v. Lowitz, 222 N.J. 494, 120 A.3d 178 (2015); Carvalho v. Wolfe, 207 Or. App. 175, 140 P.3d 1161 (2006).
- 8 Nugent v. Pilgrim's Pride Corp., 30 S.W.3d 562 (Tex. App. Texarkana 2000).

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75 Am. Jur. 2d Trespass II A Refs.

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Trespass

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II. Particular Types of Trespass

A. Trespass to Chattel

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6 to 8

A.L.R. Library

A.L.R. Index, Trespass

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75 Am. Jur. 2d Trespass § 13

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Trespass

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 13. Definition and nature of trespass to chattel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6

Forms

[Am. Jur. Legal Forms 2d § 249:8](#) (Notice to trespasser to personalty—Damage due to trespass—Request for reimbursement)

A trespass to chattel or personal property is the intentional use of or interference with personal property, which is in the possession of another, without justification.¹ Trespass to chattel occurs when there is a wrongful taking and carrying away of the property of another.² Trespass to chattels lies where an intentional interference with the possession of personal property has proximately caused injury.³

Comment:

While under early common law pleading, the form of action for trespass to chattel would lie for any direct and immediate interference with a chattel, whether the trespass was intentional, negligent, or accidental, the word "trespass," as applied to interference with chattels, has become limited to intentional interferences.⁴

The basis of a trespass to chattel cause of action lies in injury to possession.⁵ Any unlawful interference, however slight, with another's enjoyment of personal property is a trespass.⁶

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Footnotes

- 1 [Burshan v. National Union Fire Ins. Co. of Pittsburgh, PA](#), 805 So. 2d 835 (Fla. 4th DCA 2001); [Foremost Ins. Co. v. Public Service Com'n of Missouri](#), 985 S.W.2d 793 (Mo. Ct. App. W.D. 1998); [Texas-New Mexico Pipeline Co. v. Allstate Const., Inc.](#), 1962-NMSC-026, 70 N.M. 15, 369 P.2d 401 (1962).
Where the property alleged to have been taken was personalty, and alleged to have been taken without the owner's consent, such action is tortious and a trespass for which damages may be recovered. [Caldwell v. Church](#), 341 Ga. App. 852, 802 S.E.2d 835 (2017).
- 2 [Tennant v. Chase Home Finance, LLC](#), 187 So. 3d 1172 (Ala. Civ. App. 2015).
- 3 [Plotnik v. Meihaus](#), 208 Cal. App. 4th 1590, 146 Cal. Rptr. 3d 585 (4th Dist. 2012).
- 4 Restatement Second, Torts § 217, comment b.
- 5 [Fordham v. Eason](#), 351 N.C. 151, 521 S.E.2d 701, 40 U.C.C. Rep. Serv. 2d 653 (1999).
- 6 [Pacific Tel. & Tel. Co. v. Slezak](#), 151 Wash. 457, 276 P. 904 (1929).

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75 Am. Jur. 2d Trespass § 14

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Trespass

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 14. Trespass to chattel distinguished from conversion

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6

Conversion is similar to trespass to chattel.¹ An action of trespass to personalty is concurrent with the action of conversion, although the two actions are not entirely coextensive.² The elements of trespass to chattels and conversion are essentially the same, and the difference is that conversion entails a more serious deprivation of the owner's rights such that an award of the full value of the property is appropriate.³ Trespass to personal property often arises in circumstances where a defendant's interference with another's property falls short of that required for a conversion cause of action.⁴ Some states classify an interference with a chattel that compels the defendants to pay the full value of the thing with which he or she has interfered as conversion, however, if the interference with chattel does not require the defendant to pay full value, it may constitute trespass to chattels.⁵ Thus, the tort of trespass to chattels allows recovery for interference with possession of personal property not sufficiently important to be classed as conversion, and the plaintiff may recover only the actual damages suffered by reason of the impairment of the property or the loss of its use.⁶ There is no material difference between conversion and trespass to chattels when one wrongfully takes and carries another's property away.⁷

A defendant may be liable for trespass to personal property, even though the plaintiff mislabeled the cause of action as one for conversion.⁸

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Footnotes

- ¹ [Ex parte SouthTrust Bank of Alabama, N.A., 523 So. 2d 407 \(Ala. 1988\).](#)
- ² [Caldwell v. Church, 341 Ga. App. 852, 802 S.E.2d 835 \(2017\).](#)
- ³ [QVC, Inc. v. Resultly, LLC, 159 F. Supp. 3d 576 \(E.D. Pa. 2016\) \(applying Pennsylvania law\).](#)

- 4 Plotnik v. Meihaus, 208 Cal. App. 4th 1590, 146 Cal. Rptr. 3d 585 (4th Dist. 2012).
5 Ed & F Man Biofuels Ltd. v. MV FASE, 728 F. Supp. 2d 862 (S.D. Tex. 2010).
Restatement Second, Torts § 222A, comment c.
As to damages in actions in trespass, see § 95.
6 Intel Corp. v. Hamidi, 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003).
7 Wint v. Alabama Eye & Tissue Bank, 675 So. 2d 383 (Ala. 1996).
8 Thrifty-Tel, Inc. v. Bezenek, 46 Cal. App. 4th 1559, 54 Cal. Rptr. 2d 468 (4th Dist. 1996).

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75 Am. Jur. 2d Trespass § 15

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Trespass

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 15. Requisites of liability for trespass to chattel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6 to 8

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 88](#) (Complaint, petition or declaration—Trespass to property—Wrongful taking)

[Am. Jur. Pleading and Practice Forms, Trespass § 90](#) (Complaint, petition or declaration—Allegation—Injury to property)

A trespass to a chattel may be committed by the intentional dispossession of another's property, or by the use or intermeddling with an item of personal property in the possession of another.¹ It may also consist of a wrongful taking,² damaging, or destruction³ of the personal property. There must be an unauthorized, unlawful interference with or dispossession of the property,⁴ which proximately causes an injury to a possessory interest in it.⁵

Observation:

There is ordinarily no liability for trespass to chattels when a police officer observes a driver committing a misdemeanor, arrests the driver, and impounds the now-unattended vehicle that has been left where it may not be left unattended. Likewise, police have authority to seize and remove a vehicle left unattended at curbside at an airport as a result of a lawful arrest and their doing so does not give rise to liability for trespass to chattels.⁶

A trespass to personal property may be either with or without the exercise of physical force.⁷

Trespass to chattels must be based on interference with some tangible form of property.⁸ A garnishee's bank account is not a chattel that could be the subject of a trespass.⁹

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Footnotes

- 1 Koepnick v. Sears Roebuck & Co., 158 Ariz. 322, 762 P.2d 609 (Ct. App. Div. 1 1988).
Restatement Second, Torts § 217.
As to intentional dispossession, see § 17.
- 2 Weicht v. Suburban Newspapers of Greater St. Louis, Inc., 32 S.W.3d 592 (Mo. Ct. App. E.D. 2000).
- 3 Jamison v. National Loan Investors, L.P., 4 S.W.3d 465 (Tex. App. Houston 1st Dist. 1999) (regardless of negligence).
- 4 Steele v. Bowden, 238 N.C. App. 566, 768 S.E.2d 47 (2014).
- 5 Intel Corp. v. Hamidi, 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003).
- 6 State v. Roshchin, 446 Md. 128, 130 A.3d 453 (2016).
- 7 Russell v. American Real Estate Corp., 89 S.W.3d 204 (Tex. App. Corpus Christi 2002).
- 8 Pestco, Inc. v. Associated Products, Inc., 2005 PA Super 276, 880 A.2d 700 (2005) (and thus does not extend to the use of information in a bill of lading).
Even an electronic trespass to chattels claim must be based on some link to a physical object. Snap-on Business Solutions Inc. v. O'Neil & Associates, Inc., 708 F. Supp. 2d 669 (N.D. Ohio 2010).
- 9 Burshan v. National Union Fire Ins. Co. of Pittsburgh, PA, 805 So. 2d 835 (Fla. 4th DCA 2001).

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75 Am. Jur. 2d Trespass § 16

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 16. Proper possessor's actual or constructive possession of chattel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 91](#) (Complaint, petition, or declaration—Allegation—Possession of personal property under claim of ownership)

[Am. Jur. Pleading and Practice Forms, Trespass § 92](#) (Complaint, petition, or declaration—Allegation—Constructive possession—Property in hands of owner's agent or employee)

Since an action for trespass to chattel is based on the injury done to the plaintiff's possession of personal property, in order to maintain the action, the plaintiff must have been in either actual or constructive possession at the time of the injury.¹ A person in "possession of a chattel" is one who has physical control of the chattel with the intent to exercise such control on one's own behalf, or on behalf of another.²

"Actual possession" consists of exercising dominion over, making ordinary use of, or taking the profits from the property in dispute.³

Constructive possession is a legal fiction, and exists when there is no actual possession, but there is title granting an immediate right to actual possession; the key test is whether there is a right to present possession whenever desired, or a right to immediate actual possession.⁴

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Footnotes

- 1 [Steele v. Bowden, 238 N.C. App. 566, 768 S.E.2d 47 \(2014\).](#)
- 2 [Restatement Second, Torts § 216.](#)
- 3 [Fordham v. Eason, 351 N.C. 151, 521 S.E.2d 701, 40 U.C.C. Rep. Serv. 2d 653 \(1999\).](#)
- 4 [Fordham v. Eason, 351 N.C. 151, 521 S.E.2d 701, 40 U.C.C. Rep. Serv. 2d 653 \(1999\).](#)

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 17. Intentional dispossession of chattel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6, 8

A dispossession of chattel occurs when someone intentionally assumes physical control over the item and deals with it in a manner that will be destructive of the possessory interest of another person.¹ A dispossession may be committed by intentionally taking a chattel from the possession of another without the other's consent, obtaining possession from another by fraud or duress, barring the possessor's access to the property, destroying the item while it is in another's possession, or taking the property into the custody of the law.²

Comment:

The intention necessary to subject one who deprives another of possession of a chattel to liability is merely the intention to deal with the chattel in such a way that dispossession results; it is necessary, however, that the act be one the actor knows to be destructive of any possessory right.³

While an intent to intermeddle may be sufficient to establish intent,⁴ intermeddling with a chattel is not a dispossession unless the actor intends to exercise dominion and control over it inconsistent with possession in any person other than oneself.⁵ Accordingly, the interference required to establish a claim of trespass to chattel must amount to more than intermeddling.⁶

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Footnotes

- 1 Koepnick v. Sears Roebuck & Co., 158 Ariz. 322, 762 P.2d 609 (Ct. App. Div. 1 1988).
- 2 Restatement Second, Torts § 221.
- 3 Restatement Second, Torts § 222, comment c.
- 4 § 18.
- 5 Koepnick v. Sears Roebuck & Co., 158 Ariz. 322, 762 P.2d 609 (Ct. App. Div. 1 1988).
Restatement Second, Torts § 221, comment b.
- 6 Dryden v. Cincinnati Bell Tel. Co., 135 Ohio App. 3d 394, 734 N.E.2d 409 (1st Dist. Hamilton County 1999).
As to the requisite extent of harm, see § 19.

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 18. Intent to use or intermeddle with chattel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  6

Where the conduct complained of does not amount to a substantial interference with possession or the right thereto, but consists of intermeddling with or use of or damages to the personal property, the owner has a cause of action for trespass.¹ The intention required to make one liable for trespass to a chattel is present when the act is done for the purpose of using or otherwise intermeddling with a chattel or with knowledge that intermeddling will, with substantial certainty, result from the act.² Wrongful intent is not necessary, only an intention to interfere physically with the goods themselves,³ such as by intentionally taking an item of personal property from the possession of another without the other's consent, or by barring the possessor's access to it.⁴

Comment:

It is not necessary that the actor should know or have reason to know that the intermeddling is a violation of the possessory rights of another, and thus it is immaterial that the actor intermeddles with the chattel under a mistake of law or fact that has led him or her to believe that one is the possessor of it or that the possessor has consented to the actor dealing with it.⁵

Footnotes

- 1 Plotnik v. Meihaus, 208 Cal. App. 4th 1590, 146 Cal. Rptr. 3d 585 (4th Dist. 2012).
- 2 Foremost Ins. Co. v. Public Service Com'n of Missouri, 985 S.W.2d 793 (Mo. Ct. App. W.D. 1998); Texas-New Mexico Pipeline Co. v. Allstate Const., Inc., 1962-NMSC-026, 70 N.M. 15, 369 P.2d 401 (1962).
Restatement Second, Torts § 217, comment c.
- 3 Mountain States Tel. & Tel. Co. v. Horn Tower Const. Co., 147 Colo. 166, 363 P.2d 175 (1961); Texas-New Mexico Pipeline Co. v. Allstate Const., Inc., 1962-NMSC-026, 70 N.M. 15, 369 P.2d 401 (1962).
- 4 Koepnick v. Sears Roebuck & Co., 158 Ariz. 322, 762 P.2d 609 (Ct. App. Div. 1 1988).
- 5 Restatement Second, Torts § 217, comment c.

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II. Particular Types of Trespass

A. Trespass to Chattel

§ 19. Extent of harm or deprivation from trespass to chattel

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West's Key Number Digest, [Trespass](#)  6, 7

A trespass to chattels is a wrongful interference with or injury to property that causes actual damage to the property or deprives the owner of its use for a substantial period.¹ There is authority that actual injury must have occurred to the chattel or the plaintiff's rights in it for a trespass to chattels to be actionable.² The trespasser must dispossess the other person of the chattel, impair the chattel as to its condition, quality, or value, deprive the rightful possessor of the use of the chattel for a substantial time, or cause bodily harm to the possessor, or harm to some person or thing in which the possessor has a legally protected interest.³ Thus, short of dispossession, personal injury, or physical damage, intermeddling is actionable as a trespass to chattels only if the chattel is impaired as to its condition, quality, or value, or the possessor is deprived of the use of the chattel for a substantial time.⁴ The time of the deprivation must be so substantial that it is possible to estimate a loss caused by it.⁵ While a harmless use or touching of personal property may be a technical trespass, an interference, not amounting to dispossession, is not actionable, without a showing of harm.⁶ On the other hand, a claim for trespass to chattel will lie, even if the damage intentionally inflicted on the personal property belonging to another does not result in its complete destruction.⁷

Comment:

There is, however, commentary that a dispossession is always a trespass to the chattel, and subjects the actor to liability, at least for nominal damages for the interference with possession.⁸

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Footnotes

- 1 [Armstrong v. Benavides](#), 180 S.W.3d 359 (Tex. App. Dallas 2005).
- 2 [Intel Corp. v. Hamidi](#), 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003).
- 3 [Intel Corp. v. Hamidi](#), 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003); [Coleman v. Vukovich](#), 825 N.E.2d 397 (Ind. Ct. App. 2005); "[J. Doe No. 1](#)" v. CBS Broadcasting Inc., 24 A.D.3d 215, 806 N.Y.S.2d 38 (1st Dep't 2005) (automated dialing did not cause such harm to the chattel—the telephone).
[Restatement Second, Torts § 218](#).
- 4 [Intel Corp. v. Hamidi](#), 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003).
While a harmless use or touching of personal property may be a technical trespass, an interference not amounting to dispossession is not actionable, without a showing of harm; even where injunctive relief is sought, the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause irreparable injuries, ones that cannot be adequately compensated in damages. [In re iPhone Application Litigation](#), 844 F. Supp. 2d 1040 (N.D. Cal. 2012) (applying California law).
- 5 [Koepnick v. Sears Roebuck & Co.](#), 158 Ariz. 322, 762 P.2d 609 (Ct. App. Div. 1 1988) (two-minute search of vehicle insufficient); [Intel Corp. v. Hamidi](#), 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003).
As to damages for the loss of use of a chattel, generally, see § 112.
- 6 [Intel Corp. v. Hamidi](#), 30 Cal. 4th 1342, 1 Cal. Rptr. 3d 32, 71 P.3d 296 (2003).
- 7 [Seaphus v. Lilly](#), 691 F. Supp. 127 (N.D. Ill. 1988).
- 8 [Restatement Second, Torts § 222](#), comment a.
As to nominal damages in actions for trespass, generally, see § 115.

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II. Particular Types of Trespass

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West's A.L.R. Digest, [Trespass](#)  [1](#), [2](#), [10](#) to [15](#)

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II. Particular Types of Trespass

B. Trespass to Real Property

1. In General

§ 20. Nature of tort of trespass to real property

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West's Key Number Digest

West's Key Number Digest, [Trespass](#)  1, 10

Forms

[Am. Jur. Pleading and Practice Forms, Trespass §§ 5 to 23](#) (Complaint, petition, or declaration—Trespass to real property)

"Trespass to land" is an interference with another's present right of possession.¹ In fact, the essence of a trespass to real property is the injury to, violation of, or interference with the right of possession.² A trespass is committed where a plaintiff has the right of possession to the land at issue, and there is a wrongful and unlawful entry upon such possession by the defendant.³

Observation:

An action for trespass to real estate cannot be maintained for an invasion of a right-of-way or easement; this rule is based upon the principle that trespass actions are possessory actions and that the right interfered with is the plaintiff's right to the exclusive possession of a chattel or land.⁴

At common law, every person's land is deemed to be enclosed,⁵ and landowners have the right to exclude persons from trespassing on private property.⁶ Accordingly, every unauthorized, and therefore unlawful, entry into the close, or private property, of another is a trespass at common law,⁷ which necessarily carries with it some damage for which the trespasser is liable.⁸

The modern action for trespass to land stemmed from the common law action of trespass.⁹ The essence of the modern cause of action is an unauthorized entry onto the land of another,¹⁰ but a trespass to real property may consist of an injury to,¹¹ a use of,¹² or an entry upon the real estate of another, without the consent,¹³ invitation, or permission of the person lawfully entitled to possession of the real estate,¹⁴ or a privilege to enter or remain.¹⁵

Observation:

The common law writ of trespass quare clausum fregit sought redress for the intrusion, directly or indirectly, upon the real property of another.¹⁶ "Trespass on the land" generally is now used in the broader sense than the trespass that was addressed by the common law action, since it includes not only entries on land, but also the presence on the land of a thing that the actor has a duty to remove.¹⁷

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Footnotes

- 1 [Graham v. Town of Latta, South Carolina, 417 S.C. 164, 789 S.E.2d 71 \(Ct. App. 2016\), cert. denied, \(Sept. 8, 2017\).](#)
- 2 [Poppler v. Wright Hennepin Co-op Elec. Ass'n, 834 N.W.2d 527 \(Minn. Ct. App. 2013\), aff'd, 845 N.W.2d 168 \(Minn. 2014\); Philips v. Citimortgage, Inc., 430 S.W.3d 324 \(Mo. Ct. App. E.D. 2014\); Gates v. AT&T Corp., 100 A.D.3d 1216, 956 N.Y.S.2d 589 \(3d Dep't 2012\); Sagebrush Resources, LLC v. Peterson, 2014 ND 3, 841 N.W.2d 705 \(N.D. 2014\); Kilburn v. Fort Bend County Drainage Dist., 411 S.W.3d 33 \(Tex. App. Houston 14th Dist. 2013\).](#)
- 3 [Soo Line Railroad Company v. Werner Enterprises, 825 F.3d 413 \(8th Cir. 2016\), cert. denied, 137 S. Ct. 1224, 197 L. Ed. 2d 477 \(2017\) \(applying Minnesota law\).](#)
- 4 [Duke Energy of Indiana, LLC v. City of Franklin, 69 N.E.3d 471 \(Ind. Ct. App. 2016\).](#)
- 5 [Hanson v. Carroll, 133 Conn. 505, 52 A.2d 700 \(1947\); Letterman v. English Mica Co., 249 N.C. 769, 107 S.E.2d 753 \(1959\).](#)
- 6 [Church of Christ in Hollywood v. Superior Court, 99 Cal. App. 4th 1244, 121 Cal. Rptr. 2d 810 \(2d Dist. 2002\); Adams v. Cleveland-Cliffs Iron Co., 237 Mich. App. 51, 602 N.W.2d 215 \(1999\).](#)

- 7 The law holds the property of every person so sacred that no one can set his or her foot upon a neighbor's close without his or her leave. [Florida v. Jardines](#), 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013).
[Difronzo v. Village of Port Sanilac](#), 166 Mich. App. 148, 419 N.W.2d 756 (1988); [Morrison v. Smith](#), 757 S.W.2d 678 (Tenn. Ct. App. 1988).
- 8 In law every entry upon the soil of another, in the absence of a lawful authority, without the owner's license, is a trespass. [State v. Christensen](#), 517 S.W.3d 60 (Tenn. 2017), cert. denied, 138 S. Ct. 737, 199 L. Ed. 2d 604 (2018).
[Hanson v. Carroll](#), 133 Conn. 505, 52 A.2d 700 (1947); [Letterman v. English Mica Co.](#), 249 N.C. 769, 107 S.E.2d 753 (1959).
- 9 As to damages for trespass to real property, see § 103.
[Borland v. Sanders Lead Co., Inc.](#), 369 So. 2d 523, 2 A.L.R.4th 1042 (Ala. 1979).
- 10 [Albert v. Truck Insurance Exchange](#), 23 Cal. App. 5th 367, 232 Cal. Rptr. 3d 774 (2d Dist. 2018); [Archbishop Coleman F. Carroll High School, Inc. v. Maynoldi](#), 30 So. 3d 533, 255 Ed. Law Rep. 479 (Fla. 3d DCA 2010); [TMX Finance Holdings, Inc. v. Drummond Financial Services, LLC](#), 300 Ga. 835, 797 S.E.2d 842 (2017); [Jaynes v. Com.](#), 276 Va. 443, 666 S.E.2d 303 (2008).
- 11 [Winselmann v. Reynolds](#), 690 So. 2d 1325 (Fla. 3d DCA 1997); [Wendinger v. Forst Farms, Inc.](#), 662 N.W.2d 546 (Minn. Ct. App. 2003); [Jordan v. Foust Oil Co., Inc.](#), 116 N.C. App. 155, 447 S.E.2d 491 (1994).
- 12 [Kim v. Commonwealth](#), 293 Va. 304, 797 S.E.2d 766 (2017).
- 13 [Spanish Lake Restoration, L.L.C. v. Petrodome St. Gabriel II, LLC](#), 186 So. 3d 230 (La. Ct. App. 4th Cir. 2016).
- 14 [Hoery v. U.S.](#), 64 P.3d 214 (Colo. 2003).
- The essential elements of a cause of action sounding in trespass are the intentional entry onto the land of another without justification or permission. [Julia Properties, LLC v. Levy](#), 137 A.D.3d 1224, 28 N.Y.S.3d 428 (2d Dep't 2016).
- 15 [Geyso v. Daly](#), 2005 WI App 18, 278 Wis. 2d 475, 691 N.W.2d 915 (Ct. App. 2004).
- 16 As to defense of privilege, see § 71.
- 17 Restatement Second, Torts, Chapter 7, Topic 1, Scope Note.
Restatement Second, Torts, Chapter 7, Topic 1, Scope Note.

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II. Particular Types of Trespass

B. Trespass to Real Property

1. In General

§ 21. Continuing or permanent trespass to real property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Forms

[Am. Jur. Legal Forms 2d § 249:7](#) (Agreement between property owners—To hire attorney and bring suit for continuing trespasses)

[Am. Jur. Pleading and Practice Forms, Trespass § 8](#) (Complaint, petition, or declaration—Trespass to real property—Continuing trespass—Infliction of irreparable damage)

A trespass can be continuous or it can terminate.¹ A continuing trespass occurs when one person leaves on the land of another, with a duty to remove it, a structure, chattel, or other thing,² and constitutes a trespass for the entire length of time such thing is wrongfully on that land.³

A continuing trespass must be distinguished from a trespass that permanently changes the physical condition of the land, since the removal of a structure or the removal of trees does not subject the actor to liability for a continuing trespass; instead, since the actor's conduct has produced a permanent injury to the land, the possessor's right is to full redress in a single action for trespass, and a subsequent transferee acquires no cause of action for the alteration of the condition of the land.⁴ Accordingly, a continuing trespass occurs when there is some continuing or ongoing tortious activity attributable to the defendant, while a permanent trespass occurs when the defendant's tortious act has been fully accomplished.⁵ For instance, a cause of action

for a continuing intentional trespass, as opposed to a permanent trespass, arises when an intrusive substance remains on land, causes actual and substantial harm to the property, and is abatable.⁶ In this situation, the injury is a continuous one, each injury gives rise to a new cause of action,⁷ and successive lawsuits may be maintained.⁸ Because the continuous trespass may be removed or abated at any time, future damages are inherently speculative and may not be awarded.⁹ A continuing trespass is also distinguished from a series of separate trespasses on land, in that a continuing trespass is actionable by the possessor even if the intrusion or entry was originally made on the land pursuant to consent or a privilege, and the rule of continuing trespass is applicable after the transfer of ownership or possession, a matter of importance where a trespass action for the original entry is barred by the statute of limitations.¹⁰

When no further abatement of a trespass or nuisance is reasonable, the injury is complete, and the injury is permanent.¹¹ A permanent injury to real property, resulting from permanent trespass, is one of such a character and existing under such circumstances that it will be presumed to continue indefinitely; a temporary, or continuing injury, resulting from temporary trespass, is one that may be abated or discontinued at any time, either by the act of the wrongdoer, or by the injured party.¹²

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Footnotes

- 1 [Hogg v. Chevron USA, Inc.](#), 45 So. 3d 991 (La. 2010).
- 2 [Whiteman v. Chesapeake Appalachia, L.L.C.](#), 729 F.3d 381 (4th Cir. 2013) (applying West Virginia law).
As to trespass by a failure to remove an object, see § 42.
- 3 [Jagger v. Schiavello](#), 93 A.3d 656 (Del. Super. Ct. 2014).
- 4 [Restatement Second, Torts § 162](#), comment e.
As to a subsequent transferee's right to recover for injury caused by a continuing trespass, see § 32.
- 5 [Sexton v. Mason](#), 117 Ohio St. 3d 275, 2008-Ohio-858, 883 N.E.2d 1013 (2008).
- 6 [Wallace v. Lewis County](#), 134 Wash. App. 1, 137 P.3d 101 (Div. 2 2006), as corrected, (Aug. 15, 2006).
- 7 [Knight v. Waggoner](#), 359 S.C. 492, 597 S.E.2d 894 (Ct. App. 2004).
- 8 [Woldson v. Woodhead](#), 159 Wash. 2d 215, 149 P.3d 361 (2006).
- 9 [Woldson v. Woodhead](#), 159 Wash. 2d 215, 149 P.3d 361 (2006).
- 10 [Restatement Second, Torts § 160](#), comments f, h.
- 11 [Christian v. Atlantic Richfield Co.](#), 2015 MT 255, 380 Mont. 495, 358 P.3d 131 (2015).
- 12 [In re Minnwest Bank Litigation Concerning Real Property](#), 873 N.W.2d 135 (Minn. Ct. App. 2015).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

a. General Requisites

§ 22. Requisites of tort of trespass to real property, generally

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West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

The elements of trespass to real property are possession of the property by the plaintiff when the alleged trespass was committed, an unauthorized entry by the defendant, and damage to the plaintiff from the trespass.¹ One is subject to liability for trespass to real property for intentionally entering another's land or causing a thing or third person to do so,² and remaining on the land, or failing to remove from the land a thing one has a duty to remove.³

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Footnotes

¹ [South Carolina Telecommunications Group Holdings v. Miller Pipeline LLC](#), 788 S.E.2d 634 (N.C. Ct. App. 2016).

As to requirement of plaintiff's possession, see § 31.

² [Armstrong v. Berco Resources, LLC](#), 752 F.3d 716 (8th Cir. 2014) (applying North Dakota law); [Boruch v. State ex rel. Halikowski](#), 242 Ariz. 611, 399 P.3d 686 (Ct. App. Div. 1 2017), review denied, (May 8, 2018); [Martin v. Artis](#), 2012 MT 249, 366 Mont. 513, 290 P.3d 687 (2012); [Obermiller v. Baasch](#), 284 Neb. 542, 823 N.W.2d 162 (2012); [Zwart v. Penning](#), 2018 SD 40, 912 N.W.2d 833 (S.D. 2018); [Purkey v. Roberts](#), 2012 UT App 241, 285 P.3d 1242 (Utah Ct. App. 2012); [Munger v. Seehafer](#), 2016 WI App 89, 372 Wis. 2d 749, 890 N.W.2d 22 (Ct. App. 2016).

The entry upon another's land that is required to constitute a trespass need not be in person, but may be made by causing or permitting a thing to cross the boundary of the premises. [Sciscoe v. Enbridge Gathering](#) (North

Texas), L.P., 519 S.W.3d 171 (Tex. App. Amarillo 2015), review granted, (Jan. 20, 2017) and judgment rev'd, 519 S.W.3d 605 (Tex. 2017).

Restatement Second, Torts § 158.

3 Martin v. Artis, 2012 MT 249, 366 Mont. 513, 290 P.3d 687 (2012); Benson v. State, 2006 SD 8, 710 N.W.2d 131 (S.D. 2006); Harris v. Carbonneau, 165 Vt. 433, 685 A.2d 296 (1996); Kaeck v. Lewis County Public Utility Dist. No. 1, 106 Wash. App. 260, 23 P.3d 529, 91 A.L.R.5th 727 (Div. 2 2001).

A civil trespass encompasses both the initial unauthorized entry upon the property of another and the subsequent failure to cease or abate the intrusion. Davis v. Westphal, 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).

Restatement Second, Torts § 158.

As to failure to remove something from the land, see § 42.

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II. Particular Types of Trespass

B. Trespass to Real Property


2. Elements

a. General Requisites

§ 23. Intent to enter onto real property of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  2, 10, 12

A trespass to real property requires the intentional entry onto the land of another.¹ A trespass to real property is characterized as an intentional tort,² regardless of the actor's motivation.³ Trespass to realty is an intentional tort in the sense that it involves the intent to commit an act that violates a property right, or would be practically certain to have that effect, although the actor may not know the act he or she intends to commit is such a violation.⁴ Liability for a trespass upon real property produced by a voluntary act need not be grounded in negligence, so long as the act causing the trespass was intended.⁵

In the context of a trespass, "intent" refers to intent to be on the land.⁶ Trespass to real property does not require proof that a person entered property with the intent to commit trespass.⁷ While a trespass clearly occurs when the actor knowingly and without authority enters the land of another,⁸ the requisite intention is to enter upon the particular land in question, irrespective of whether the actor knows or should know that he or she is not entitled to enter.⁹ The only relevant intent is that of the actor to enter the real property, and the actor's subjective intent or awareness of the property's ownership is irrelevant.¹⁰ It is not necessary that one act for the purpose of entering; it is enough that the actor knows that the conduct will result in such an entry, inevitably or to a substantial certainty.¹¹

It is only necessary that the actor intentionally be upon any part of the land in question.¹² It is not necessary that one intend to invade the possessor's interest in the exclusive possession of the land or take possession¹³ and, therefore, know that the entry is an intrusion.¹⁴ Thus, an intent to be at the place where the trespass allegedly occurred is sufficient to show an intentional

entry,¹⁵ even though the defendant acted in good faith, and under the mistaken belief, however reasonable, that he or she was not committing a wrong.¹⁶ Thus, entering upon the land of another without permission, even if innocently or by mistake, constitutes trespass.¹⁷ The defendant need not have contemplated any damage to the plaintiff resulting from the intentional entry.¹⁸ It is also immaterial whether that person honestly and reasonably believes that the land is one's own, or that he or she has the consent of the possessor or of a third person having the power to give consent, or a mistaken belief that one has some privilege to enter,¹⁹ or right to be on the land.²⁰

An attempt to base a trespass judgment on a finding of "constructive intent," is merely an unacceptable device to impose absolute liability.²¹ Thus, absent a purpose to enter or a substantial certainty that entry will result, mere knowledge that an entry has occurred is not enough to establish a claim for trespass under some theory of constructive intent.²²

Under a statute providing an action for trespass if a person willfully and intentionally enters property on which a no trespassing sign is posted, "intentional" is defined as done with the aim of carrying out the act and "willful" is defined as voluntary and intentional, but not necessarily malicious.²³

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Footnotes

- 1 Wal-Mart Stores, Inc. v. United Food and Commercial Workers International Union, 2016 COA 72, 382 P.3d 1249 (Colo. App. 2016), cert. denied, 2016 WL 5723926 (Colo. 2016); JMS Newberry, LLC v. Kaman Aerospace Corp., 149 Conn. App. 630, 90 A.3d 249 (2014); Chicago Title Land Trust Co. v. JS II, LLC, 2012 IL App (1st) 63420, 364 Ill. Dec. 709, 977 N.E.2d 198 (App. Ct. 1st Dist. 2012); Martin v. Artis, 2012 MT 249, 366 Mont. 513, 290 P.3d 687 (2012); South Carolina Telecommunications Group Holdings v. Miller Pipeline LLC, 788 S.E.2d 634 (N.C. Ct. App. 2016) (in absence of negligence); Salazar v. Sanders, 440 S.W.3d 863 (Tex. App. El Paso 2013).
As to liability relating to trees and bushes near or on a property line, see Am. Jur. 2d, Adjoining Landowners §§ 15 to 26.
- 2 Hensley v. San Diego Gas & Electric Co., 7 Cal. App. 5th 1337, 213 Cal. Rptr. 3d 803 (4th Dist. 2017); Davis v. Westphal, 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
As to the intent required to constitute trespass, generally, see § 9.
- 3 Hensley v. San Diego Gas & Electric Co., 7 Cal. App. 5th 1337, 213 Cal. Rptr. 3d 803 (4th Dist. 2017).
- 4 Kilburn v. Fort Bend County Drainage Dist., 411 S.W.3d 33 (Tex. App. Houston 14th Dist. 2013).
- 5 Tacon v. Equity One, Inc., 280 Ga. App. 183, 633 S.E.2d 599 (2006).
- 6 Liberty Place Retail Associates, L.P. v. Israelite School of Universal Practical Knowledge, 2014 PA Super 233, 102 A.3d 501 (2014).
The intent element of civil trespass only requires proof that the tortfeasor intentionally entered or remained. Davis v. Westphal, 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
In the context of the intentional entry element of a trespass claim, "intent" is defined as intending the act which produces the unlawful intrusion, when the intrusion is an immediate or inevitable consequence of that act. Marone v. Kally, 109 A.D.3d 880, 971 N.Y.S.2d 324 (2d Dep't 2013).
- 7 Salazar v. Sanders, 440 S.W.3d 863 (Tex. App. El Paso 2013).
- 8 Pope v. Pulte Home Corp., 246 Ga. App. 120, 539 S.E.2d 842 (2000).
- 9 Garner v. Kovalak, 817 N.E.2d 311 (Ind. Ct. App. 2004); Armstrong v. Bromley Quarry & Asphalt, Inc., 305 Kan. 16, 378 P.3d 1090 (2016); Thomas v. Harrah's Vicksburg Corp., 734 So. 2d 312 (Miss. Ct. App. 1999).
Restatement Second, Torts § 163, comment b.
- 10 Salazar v. Sanders, 440 S.W.3d 863 (Tex. App. El Paso 2013).
- 11 Restatement Second, Torts § 163, comment c.
- 12 Garner v. Kovalak, 817 N.E.2d 311 (Ind. Ct. App. 2004).

- 13 Millers Mut. Ins. Ass'n of Illinois v. Graham Oil Co., 282 Ill. App. 3d 129, 218 Ill. Dec. 60, 668 N.E.2d 223
(2d Dist. 1996); Garner v. Kovalak, 817 N.E.2d 311 (Ind. Ct. App. 2004).
- 14 Garner v. Kovalak, 817 N.E.2d 311 (Ind. Ct. App. 2004).
- 15 Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, 232 Cal. App. 4th 1171, 181 Cal. Rptr. 3d
577 (5th Dist. 2014); Alexander v. Brown, 793 So. 2d 601 (Miss. 2001).
- 16 Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, 232 Cal. App. 4th 1171, 181 Cal. Rptr. 3d
577 (5th Dist. 2014).
- 17 Schulz v. Dattero, 104 A.D.3d 831, 961 N.Y.S.2d 308 (2d Dep't 2013).
- 18 Rainey v. St. Lawrence Homes, Inc., 174 N.C. App. 611, 621 S.E.2d 217 (2005).
- 19 Restatement Second, Torts § 163, comment b.
- 20 St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conference of United Methodist Church,
Inc., 145 P.3d 541 (Alaska 2006).
- 21 Moulton v. Groveton Papers Co., 112 N.H. 50, 289 A.2d 68, 51 A.L.R.3d 957 (1972).
- 22 United Proteins, Inc. v. Farmland Industries, Inc., 259 Kan. 725, 915 P.2d 80 (1996).
- 23 Akers v. D.L. White Const., Inc., 156 Idaho 37, 320 P.3d 428 (2014).

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75 Am. Jur. 2d Trespass § 24

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Trespass

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II. Particular Types of Trespass

B. Trespass to Real Property


2. Elements

a. General Requisites

§ 24. Intent to enter onto real property of another—Casual or unintended entry

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#) , [2](#), [10](#), [12](#)

At common law, a casual trespass is one that was unintended, accidental, or negligent, as contrasted with one under design or a claim of right.¹ On the other hand, a trespass committed under a negligently mistaken belief in the right to enter and cut timber would not be casual, since the trespasser intended to cut.²

A distinction is sometimes made between accidental and intentional entries, since accidental entries are often actionable when produced negligently or as a consequence of abnormally dangerous activities, but are not actionable as trespasses.³ Liability based on a trespass theory has been denied in various cases where the entry was accidental or unintended.⁴ Except where the actor is engaged in an abnormally dangerous activity, an unintentional and nonnegligent entry on land in the possession of another, or causing a thing or a third person to enter the land, does not subject the actor to liability to the possessor.⁵ even though the entry causes harm to the possessor or to a thing or third person in whose security the possessor has a legally protected interest.⁶ However, there is also authority that liability for trespass may be based on intentionally or negligently intruding onto the property of another.⁷ Based on the rule that a trespasser is liable notwithstanding a bona fide mistake of law,⁸ such as regarding one's title, it has also been said that trespass to land may be both unintended and nonnegligent,⁹ and thus an action for trespass to real property may be maintained whether defendant committed the trespass unwittingly or willfully and wantonly.¹⁰

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Footnotes

- 1 Matanuska Elec. Ass'n, Inc. v. Weissler, 723 P.2d 600 (Alaska 1986).
As to a statutory right to damages for trespass except for casual or involuntary entries, see § 126.
- 2 Matanuska Elec. Ass'n, Inc. v. Weissler, 723 P.2d 600 (Alaska 1986).
- 3 Jersey City Redevelopment Authority v. PPG Industries, 655 F. Supp. 1257 (D.N.J. 1987).
A court would not strip the tort of trespass to land of its distinctive accouterments and commingle its identity
with other causes of action, including liability for harm resulting from negligence. *Adams v. Cleveland-*
Cliffs Iron Co., 237 Mich. App. 51, 602 N.W.2d 215 (1999).
- 4 Lanier v. Burnette, 245 Ga. App. 566, 538 S.E.2d 476 (2000); *Garner v. Kovalak*, 817 N.E.2d 311 (Ind. Ct.
App. 2004); *Terre Aux Boeufs Land Co., Inc. v. J.R. Gray Barge Co.*, 803 So. 2d 86 (La. Ct. App. 4th Cir.
2001), writ denied, 811 So. 2d 887 (La. 2002) (barge stranded on property due to a hurricane); *Branstetter*
v. Beaumont Supper Club, Inc., 224 Mont. 20, 727 P.2d 933 (1986).
- 5 Klingshirn v. McNeal, 239 Ga. App. 112, 520 S.E.2d 761 (1999).
Restatement Second, Torts § 166.
- 6 Restatement Second, Torts § 166.
- 7 Millers Mut. Ins. Ass'n of Illinois v. Graham Oil Co., 282 Ill. App. 3d 129, 218 Ill. Dec. 60, 668 N.E.2d 223
(2d Dist. 1996); *Olympic Pipe Line Co. v. Thoeny*, 124 Wash. App. 381, 101 P.3d 430 (Div. 2 2004).
As to trespasses involving reckless or negligent conduct, generally, see § 12.
- 8 § 11.
- 9 JBG/Twinbrook Metro Ltd. Partnership v. Wheeler, 346 Md. 601, 697 A.2d 898 (1997).
- 10 Baltimore Gas and Elec. Co. v. Flippo, 348 Md. 680, 705 A.2d 1144 (1998).

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75 Am. Jur. 2d Trespass § 25

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Trespass

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

a. General Requisites

§ 25. Requirement of unauthorized or wrongful entry onto real property of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Generally speaking, in a trespass claim, a plaintiff must prove that the defendant entered the land without right.¹ The essence of the cause of action for trespass is an unauthorized entry onto the land of another.² Thus, to establish trespass to real property, it must be shown that the alleged trespasser entered the property of another without consent or privilege,³ or without justification or permission,⁴ or it must be shown that entry was unauthorized or without the owner's consent,⁵ was wrongful and unlawful,⁶ or was without consent or legal right.⁷ Accordingly, if a person enters upon the land of another without the owner's permission or if the person remains on land against the owner's wishes, then the person becomes a trespasser.⁸

Consent, or lack thereof, is an element of the trespass cause of action rather than an affirmative defense; otherwise, a trespass cause of action would require plaintiffs to prove only an entry onto their property, which ignores the well-established definition that the entry is actionable only if it is unauthorized or without consent.⁹

Observation:

Generally, an owner of realty has the right to exclude all others from use of the property; of course, this right to exclude may be relinquished, and therefore, mere entry onto the property of another may not always be actionable as a trespass.¹⁰

Every unauthorized entry on the land of another constitutes a trespass.¹¹ Liability for trespass may attach regardless of the defendants' mistaken belief that they had a right to enter.¹²

A trespass occurs when a person enters or remains on premises in the possession of another without a privilege to do so; a privilege to enter may be created by the possessor's consent or otherwise.¹³ If a person is an invitee or a business visitor, the person is generally not a trespasser.¹⁴

In the absence of a legally enforceable agreement, such as a lease or rental agreement or a contract to sell, an occupier of premises is at best a tenant at sufferance and at worst a trespasser.¹⁵

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Footnotes

- 1 [Duke Energy of Indiana, LLC v. City of Franklin](#), 69 N.E.3d 471 (Ind. Ct. App. 2016).
- 2 [Hensley v. San Diego Gas & Electric Co.](#), 7 Cal. App. 5th 1337, 213 Cal. Rptr. 3d 803 (4th Dist. 2017); [Environmental Processing Systems, L.C. v. FPL Farming Ltd.](#), 457 S.W.3d 414 (Tex. 2015).
Modern common law trespass is an intentional tort claim for damages caused by an unauthorized entry or holdover upon real property of another. [Davis v. Westphal](#), 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
- 3 [Gray v. Berg](#), 2016 ND 82, 878 N.W.2d 79 (N.D. 2016).
- 4 [Julia Properties, LLC v. Levy](#), 137 A.D.3d 1224, 28 N.Y.S.3d 428 (2d Dep't 2016).
- 5 [Environmental Processing Systems, L.C. v. FPL Farming Ltd.](#), 457 S.W.3d 414 (Tex. 2015).
- 6 [Johnson v. Paynesville Farmers Union Co-op. Oil Co.](#), 817 N.W.2d 693 (Minn. 2012).
- 7 [Davis v. Westphal](#), 2017 MT 276, 389 Mont. 251, 405 P.3d 73 (2017).
- 8 [GeorgiaCarryOrg, Inc. v. Georgia](#), 687 F.3d 1244 (11th Cir. 2012).
- 9 [Environmental Processing Systems, L.C. v. FPL Farming Ltd.](#), 457 S.W.3d 414 (Tex. 2015).
- 10 [Environmental Processing Systems, L.C. v. FPL Farming Ltd.](#), 457 S.W.3d 414 (Tex. 2015).
- 11 [Reed v. Reid](#), 980 N.E.2d 277 (Ind. 2012).
- 12 [Marone v. Kally](#), 109 A.D.3d 880, 971 N.Y.S.2d 324 (2d Dep't 2013).
- 13 [Marlow v. City of Sisters](#), 281 Or. App. 462, 383 P.3d 908 (2016).
- 14 [United Food and Commercial Workers Intern. Union v. Wal-Mart Stores, Inc.](#), 430 S.W.3d 508 (Tex. App. Fort Worth 2014).
- 15 [Jimenez v. McGeary](#), 542 S.W.3d 810 (Tex. App. Fort Worth 2018), review denied, (June 1, 2018).

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75 Am. Jur. 2d Trespass § 26

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Trespass

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

a. General Requisites

§ 26. Injury or harm from unauthorized entry upon land of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  11, 14

It has been said that one is subject to liability to another for trespass, irrespective of whether the actor thereby causes harm to any legally protected interest of the other person,¹ and every unauthorized entry upon the land of another is a trespass, whether the owner suffers substantial injury or not, since the owner at least sustains a legal injury.² Torts such as trespass are intentional and do not require a plaintiff to have sustained an actual loss; instead, the invasion of one's property alone gives rise to the cause of action.³ Proof of damage is not an element of trespass to real property, as all that the plaintiff must show is that the defendant entered the plaintiff's land without authorization, remains on the land, or fails to remove from the land a thing which the defendant has a duty to remove.⁴ Property owners have an unconditional right to exclude others through the ability to maintain an action in trespass even when no damages are provable.⁵

Observation:

An action for trespass is maintainable for an entry upon the land of another, although there is no real damage, because repeated acts of the kind might be used as evidence of title, and thereby the right of the plaintiff might be injured.⁶ Since the essence of trespass to real property is injury to the right of possession, the mere fact that the plaintiff expended no money to repair any damage to the property does not warrant dismissal of the cause of action alleging trespass.⁷

The true "injury" produced by an intentional trespass onto real property is the violation of the possessor's right to exclude others, even if there are, in some instances, other damages that flow from the trespass.⁸ Thus, the injury caused by trespass to real property can be the loss of the use and enjoyment of the land or injury to the land.⁹

Other cases contain language that the trespass must cause injury¹⁰ and the harm must flow from or be the direct result of the invasion.¹¹ Some decisions are based on the ground that the defendant's conduct was not substantial enough to be regarded as a trespassory intrusion.¹²

The theory of negligent trespass¹³ requires a finding that the negligent entry onto the plaintiff's land caused harm.¹⁴

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Footnotes

- 1 [Martin v. Artis](#), 2012 MT 249, 366 Mont. 513, 290 P.3d 687 (2012); [Movrich v. Lobermeier](#), 2018 WI 9, 379 Wis. 2d 269, 905 N.W.2d 807 (2018).
Trespass is the unauthorized entry by a person upon the land of another, even if no damage is done, or the injury is slight. [Rosenfeld v. Thoele](#), 28 S.W.3d 446 (Mo. Ct. App. E.D. 2000).
[Restatement Second, Torts](#) § 158.
- 2 [Bittner v. Huth](#), 162 Md. App. 745, 876 A.2d 157 (2005); [XTO Energy Inc. v. Goodwin](#), 2017 WL 4675136 (Tex. App. Tyler 2017), petition for review filed, (Jan. 16, 2018).
While a particular trespass may constitute only a minor inconvenience, a property owner's right to exclude others from his or her land has been recognized as one of the most essential property rights. [Ogg v. Mediacom, L.L.C.](#), 142 S.W.3d 801 (Mo. Ct. App. W.D. 2004).
- 3 [Newstone Development, LLC v. East Pacific, LLC](#), 140 A.3d 100 (R.I. 2016).
- 4 [Holcomb v. Rodriguez](#), 2016-NMCA-075, 387 P.3d 286 (N.M. Ct. App. 2016), cert. denied, (Aug. 18, 2016).
Entry upon the land that interferes with the landowner's right to exclusive possession results in trespass whether that interference was reasonably foreseeable or whether it caused damages. [Johnson v. Paynesville Farmers Union Co-op. Oil Co.](#), 817 N.W.2d 693 (Minn. 2012).
- 5 [Johnson v. Paynesville Farmers Union Co-op. Oil Co.](#), 817 N.W.2d 693 (Minn. 2012).
- 6 [Evans v. Cote](#), 197 Vt. 523, 2014 VT 104, 107 A.3d 911 (2014).
- 7 [Julia Properties, LLC v. Levy](#), 137 A.D.3d 1224, 28 N.Y.S.3d 428 (2d Dep't 2016).
- 8 [Munger v. Seehafer](#), 2016 WI App 89, 372 Wis. 2d 749, 890 N.W.2d 22 (Ct. App. 2016).
- 9 [Daniel v. Morris](#), 181 So. 3d 1195 (Fla. 5th DCA 2015).
- 10 [Bayou Fleet Partnership v. Clulee](#), 150 So. 3d 329 (La. Ct. App. 5th Cir. 2014); [Patel v. City Of Everman](#), 179 S.W.3d 1 (Tex. App. Tyler 2004).
- 11 [Bayou Fleet Partnership v. Clulee](#), 150 So. 3d 329 (La. Ct. App. 5th Cir. 2014); [Mitchell v. Broadway](#), 177 N.C. App. 430, 628 S.E.2d 847 (2006); [Hawkins v. City of Greenville](#), 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).
- 12 As to whether harm is an element of trespass, generally, see § 8.
- 12 [Shaffer v. Video Display Corp.](#), 43 Ohio App. 3d 49, 539 N.E.2d 170 (3d Dist. Shelby County 1988); [Martin v. Reynolds Metals Co.](#), 221 Or. 86, 342 P.2d 790 (1959).
- 13 § 12.

75 Am. Jur. 2d Trespass § 27

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Trespass

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

b. Nature of Intrusion

§ 27. Nature of intrusion onto real property of another, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Any entry on land in the peaceable possession of another is deemed a trespass, without regard to the amount of force used.¹ Any trespass, however small and insignificant, gives rise to an actionable claim.² Neither the form or the instrumentality by which the close is broken nor the extent of the damages is material,³ although it is generally held that the invasion must be physical and accomplished in a tangible matter.⁴

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Footnotes

- 1 [Checkley v. Illinois Cent. R. Co.](#), 257 Ill. 491, 100 N.E. 942 (1913) (any unauthorized entry upon the land of another is a trespass, even though no actual force is exerted); [Philips v. Citimortgage, Inc.](#), 430 S.W.3d 324 (Mo. Ct. App. E.D. 2014); [Letterman v. English Mica Co.](#), 249 N.C. 769, 107 S.E.2d 753 (1959).
As to force as an element of trespass, see § 7.
- 2 [Babb v. Lee County Landfill SC, LLC](#), 405 S.C. 129, 747 S.E.2d 468 (2013).
- 3 [Whittaker v. Stangvick](#), 100 Minn. 386, 111 N.W. 295 (1907); [Letterman v. English Mica Co.](#), 249 N.C. 769, 107 S.E.2d 753 (1959).
- 4 § 29.

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

b. Nature of Intrusion

§ 28. Indirect intrusion onto real property of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10, 14

Trespass may be committed by consequential and indirect injury as well as by direct and forcible injury.¹ A direct or immediate invasion is accomplished by any means that the trespasser knew or reasonably should have known would result in the physical invasion of the plaintiff's land.² Trespasses can occur if individuals set in motion actions that intrude on another's land and cause damage.³ A landowner who sets into motion a force that, in the usual course of events, will damage another's property is guilty of a trespass on that property.⁴

For an indirect invasion to amount to an actionable trespass, there must be an interference with plaintiff's exclusive possessory interest; that is, through the defendant's intentional conduct and with reasonable foreseeability, some substance has entered upon the land itself, affecting its nature and character, and causing substantial actual damage to it.⁵ The four elements that a plaintiff must prove in order to recover for an indirect trespass are (1) an invasion affecting an interest in the exclusive possession of the property, (2) an intentional doing of the act that results in the invasion, (3) reasonable foreseeability that the act could result in an invasion of the plaintiff's possessory interest, and (4) substantial damage to the property.⁶

Caution:

On a claim for indirect trespass, the law requires a showing of substantial damage to plaintiffs' property.⁷

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Footnotes

- 1 Hensley v. San Diego Gas & Electric Co., 7 Cal. App. 5th 1337, 213 Cal. Rptr. 3d 803 (4th Dist. 2017).
- 2 Adams v. Cleveland-Cliffs Iron Co., 237 Mich. App. 51, 602 N.W.2d 215 (1999).
- 3 Brewer v. Dick Lavy Farms, L.L.C., 2016-Ohio-4577, 67 N.E.3d 196 (Ohio Ct. App. 2d Dist. Darke County 2016).
- 4 Miller v. Carnation Co., 33 Colo. App. 62, 516 P.2d 661 (App. 1973); Zimmer v. Stephenson, 66 Wash. 2d 477, 403 P.2d 343 (1965) (tractor threw spark onto plaintiff's property); Steiger v. Nowakowski, 67 Wis. 2d 355, 227 N.W.2d 104 (1975) (rainwater directed by a ditch eroded a retaining wall on plaintiff's land).
- 5 Born v. Exxon Corp., 388 So. 2d 933 (Ala. 1980).
- 6 AmSouth Bank, N.A. v. City of Mobile, 500 So. 2d 1072 (Ala. 1986).
- 7 Abrams v. Ciba Specialty Chemicals Corp., 663 F. Supp. 2d 1243 (S.D. Ala. 2009) (applying Alabama law); Hayes v. Carrigan, 2017-Ohio-5867, 94 N.E.3d 1091 (Ohio Ct. App. 1st Dist. Hamilton County 2017).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

b. Nature of Intrusion

§ 29. Physical and tangible intrusion onto real property of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  [10](#), [12](#), [14](#)

A.L.R. Library

[Recovery in trespass for injury to land caused by airborne pollutants](#), 2 A.L.R.4th 1054

Because it is the possessor's right to exclusive possession that is protected by an action for trespass,¹ it is generally held that the invasion of the property must be physical² and, in cases not involving a person trespassing, accomplished by a tangible object or thing³ or agency, which could be either a person or a tangible object.⁴

Observation:

To recover for trespass to land, a plaintiff must prove an invasion that interfered with the right of exclusive possession of the land, and that was a direct result of some act committed by the defendant; any physical entry upon the surface of the land constitutes such an invasion, whether the entry is a walking upon it, flooding it with water, casting objects upon it, or otherwise.⁵

In some states, intangible intrusions on land, such as electric and magnetic fields emitted from power lines, are not actionable as trespasses, unless they cause physical damage to the real property.⁶ The traditional common law rule, the dimensional test, provides that a trespass only exists where the invasion of land occurs through a physical, tangible object, and under that rule, intangible matter or energy, such as smoke, noise, light, and vibration, are insufficient to constitute a trespass.⁷ An invasion committed by an intangible agency may interfere with the landowner's use and enjoyment of the land, but those invasions do not require that the landowner share possession of the land in the way that invasions by physical objects do for purposes of a trespass claim.⁸

Observation:

Generally, intangible intrusions, such as by noise, odor, or light alone, are treated as nuisances, not trespass.⁹ The basis for this distinction, in the case of intrusive odors, is that they interfere with nearby property owners' use and enjoyment of their land, not with their exclusive possession of it.¹⁰

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Footnotes

- 1 [Boyne v. Town of Glastonbury](#), 110 Conn. App. 591, 955 A.2d 645 (2008).
- 2 [Cross v. Western Waste Industries](#), 2015 Ark. App. 476, 469 S.W.3d 820 (2015); [Boyne v. Town of Glastonbury](#), 110 Conn. App. 591, 955 A.2d 645 (2008); [Freeman v. Grain Processing Corp.](#), 848 N.W.2d 58 (Iowa 2014) (some observable or physical invasion); [Philips v. Citimortgage, Inc.](#), 430 S.W.3d 324 (Mo. Ct. App. E.D. 2014); [Sciscoe v. Enbridge Gathering \(North Texas\), L.P.](#), 519 S.W.3d 171 (Tex. App. Amarillo 2015), review granted, (Jan. 20, 2017) and judgment rev'd, 519 S.W.3d 605 (Tex. 2017).
A shopping center owner that erroneously paid the utility bills for an adjoining landowner's parking lot lights, because they were attached to an electric meter under the shopping center owner's name, could not bring a trespass action against the adjoining landowner, since the adjoining landowner had not physically invaded the shopping center's property. [Commercial Properties Development Corp. v. State Teachers Retirement System](#), 808 So. 2d 534 (La. Ct. App. 1st Cir. 2001).
- 3 [Rickel v. Komaromi](#), 144 Conn. App. 775, 73 A.3d 851 (2013); [Chabad-Lubavitch of Michigan v. Schuchman](#), 305 Mich. App. 337, 853 N.W.2d 390 (2014), judgment rev'd in part on other grounds, appeal denied in part on other grounds, 862 N.W.2d 648 (Mich. 2015), cert. denied, 136 S. Ct. 2449, 195 L. Ed. 2d 264 (2016); [Babb v. Lee County Landfill SC, LLC](#), 405 S.C. 129, 747 S.E.2d 468 (2013).
- 4 [Poppler v. Wright Hennepin Co-op Elec. Ass'n](#), 834 N.W.2d 527 (Minn. Ct. App. 2013), aff'd, 845 N.W.2d 168 (Minn. 2014).
As to recovery in trespass actions predicated upon noise or vibrations, see § 48.

- 5 [Collett v. Cordovana](#), 290 Va. 139, 772 S.E.2d 584 (2015).
- 6 [San Diego Gas & Electric Co. v. Superior Court](#), 13 Cal. 4th 893, 55 Cal. Rptr. 2d 724, 920 P.2d 669 (1996); [Public Service Co. of Colorado v. Van Wyk](#), 27 P.3d 377 (Colo. 2001); [Edgcomb v. Lower Valley Power and Light, Inc.](#), 922 P.2d 850 (Wyo. 1996).
- 7 [Babb v. Lee County Landfill SC, LLC](#), 405 S.C. 129, 747 S.E.2d 468 (2013).
- For a trespass claim involving toxic chemicals, a defendant is liable only if he or she had good reason to know or expect that subterranean and other conditions were such that there would be passage of the toxins from the defendant's to the plaintiff's land. [Ivory v. International Business Machines Corp.](#), 116 A.D.3d 121, 983 N.Y.S.2d 110 (3d Dep't 2014).
- The owner of a unit in a housing cooperative failed to establish that smoke entering his unit as a result of a neighbor's cigarette smoking constituted a trespass, as the smoke was an intangible intrusion and the owner did not present any evidence that the smoke caused any physical damage to his property. [Schuman v. Greenbelt Homes, Inc.](#), 212 Md. App. 451, 69 A.3d 512 (2013).
- 8 [Johnson v. Paynesville Farmers Union Co-op. Oil Co.](#), 817 N.W.2d 693 (Minn. 2012).
- 9 Am. Jur. 2d, Nuisances § 5.
- 10 [Wendinger v. Forst Farms, Inc.](#), 662 N.W.2d 546 (Minn. Ct. App. 2003).

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75 Am. Jur. 2d Trespass § 30

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Trespass

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

b. Nature of Intrusion

§ 30. Manner or place of intrusion or invasion onto real property of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  11

In general, a trespass may be committed on, beneath, or above the surface of the earth,¹ and may be committed upon the vertical as well as the horizontal surface of another's premises.² If unprivileged, it is a trespass to pile dirt against a dividing wall or fence that stands wholly upon another's land, paint a sign or trail a vine on the wall, or attach an electric wire to another's house.³ A trespass to real property is not confined to an invasion of the surface, but also extends to a subsurface invasion.⁴ Causing the subsurface migration of fluids into a mineral estate without consent constitutes a trespass.⁵ For a trespass claim involving toxic chemicals, a defendant is liable only if he or she had good reason to know or expect that subterranean and other conditions were such that there would be passage of the toxins from the defendant's to the plaintiff's land.⁶ The elements for a trespass caused by leaking hazardous substances are (1) the plaintiff was in possession of the property; (2) the defendant personally, or an object under the defendant's control, voluntarily entered, caused to enter, or remained present upon plaintiff's property; and (3) the entry was unauthorized.⁷

The use of a private sewer line constitutes a trespass, even though the point of connection was beneath a public street, where that connection clearly and necessarily caused sewage to enter and pass through the privately owned line.⁸

An invasion of another's airspace need not be more than de minimis in order to constitute a trespass.⁹

Footnotes

- 1 Obermiller v. Baasch, 284 Neb. 542, 823 N.W.2d 162 (2012); Aguilar v. Trujillo, 162 S.W.3d 839 (Tex. App. El Paso 2005).
Restatement Second, Torts § 159.
As to whether the use of airspace is a trespass, see Am. Jur. 2d, Aviation § 3.
- 2 Restatement Second, Torts § 159, comment d.
- 3 Restatement Second, Torts § 159, comment d.
- 4 Parks Hiway Enterprises, LLC v. CEM Leasing, Inc., 995 P.2d 657, 40 U.C.C. Rep. Serv. 2d 678 (Alaska 2000); Hartman v. Texaco Inc., 123 N.M. 220, 1997-NMCA-032, 937 P.2d 979 (Ct. App. 1997); New York State Elec. & Gas Corp. v. County of Chemung, 137 A.D.3d 1550, 29 N.Y.S.3d 579 (3d Dep't 2016), leave to appeal dismissed, 28 N.Y.3d 1044, 43 N.Y.S.3d 243, 65 N.E.3d 1278 (2016).
As to trespass on gas and oil interests, see Am. Jur. 2d, Gas and Oil §§ 296, 298, 306, 307.
As to trespasses to mineral claims and rights, see Am. Jur. 2d, Mines and Minerals §§ 395 to 397.
- 5 Orange County Water Dist. v. Sabic Innovative Plastics US, LLC, 14 Cal. App. 5th 343, 222 Cal. Rptr. 3d 83 (4th Dist. 2017), as modified on denial of reh'g, (Aug. 25, 2017) and review denied, (Nov. 15, 2017).
- 6 Ivory v. International Business Machines Corp., 116 A.D.3d 121, 983 N.Y.S.2d 110 (3d Dep't 2014).
- 7 BSK Enterprises, Inc. v. Beroth Oil Co., 246 N.C. App. 1, 783 S.E.2d 236 (2016), review denied, 787 S.E.2d 39 (N.C. 2016) and review denied, 787 S.E.2d 385 (N.C. 2016).
- 8 Lambert v. Holmberg, 271 Neb. 443, 712 N.W.2d 268 (2006).
- 9 Arcamone-Makinano v. Britton Property, Inc., 156 A.D.3d 669, 67 N.Y.S.3d 290 (2d Dep't 2017), leave to appeal denied, 31 N.Y.3d 907, 2018 WL 2122422 (2018).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(1) In General

§ 31. Requirement of plaintiff's possession of property trespassed on, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Generally speaking, one of the elements of a cause of action for trespass to real property is that the plaintiff must have been in rightful possession of the land on which the acts of trespass were committed.¹ The plaintiff must have been in possession of the land and the defendant entered the land without right.²

Definition:

A person who is in the possession of land is one who is in occupancy with the intent to control the land; or, who has been, but no longer is, in control of the land with that intent, if after ceasing occupancy without abandoning the land, no other person has obtained possession with the intent to control it; or, who has the right as against all persons to immediate occupancy of the land, if no other person is in possession, with the intent to control the land.³

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Footnotes

- 1 [Soo Line Railroad Company v. Werner Enterprises](#), 825 F.3d 413 (8th Cir. 2016), cert. denied, 137 S. Ct. 1224, 197 L. Ed. 2d 477 (2017) (applying Minnesota law); [Vaccaro v. Shell Beach Condominium, Inc.](#), 169 Conn. App. 21, 148 A.3d 1123 (2016), certification denied, 324 Conn. 917, 154 A.3d 1008 (2017) (ownership or possessory interest in land by the plaintiff); [South Carolina Telecommunications Group Holdings v. Miller Pipeline LLC](#), 788 S.E.2d 634 (N.C. Ct. App. 2016); [Salazar v. Sanders](#), 440 S.W.3d 863 (Tex. App. El Paso 2013).
- 2 [Duke Energy of Indiana, LLC v. City of Franklin](#), 69 N.E.3d 471 (Ind. Ct. App. 2016).
- 3 [Restatement Second, Torts § 157](#).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(1) In General

§ 32. Time of plaintiff's possession of property trespassed on

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

To maintain an action of trespass, the plaintiff must have had actual or constructive possession of the real property in question at the time when the alleged trespass occurred.¹ A purchaser acquiring title after the commission of a trespass may not recover,² unless the title is retrospective in character, dating back prior to the time of the injury.³ An exception is where a trespass is continuous in character and has not ceased at the time when the property is conveyed to the plaintiff, who may maintain an action for the injury sustained by the plaintiff, even though the trespass began prior to that conveyance.⁴ Thus, if a possessory interest in land has been transferred after the actor placed something on the land that constitutes a continuing trespass, a transferee of the land may maintain an action for continuing the trespass there.⁵

The fact that the plaintiff transfers the property after the trespass does not divest one of the right to recover if the injury was inflicted during the time the plaintiff controlled the property.⁶

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Footnotes

- ¹ [Bowman v. Hibbard](#), 314 Ky. 688, 236 S.W.2d 938 (1951); [Barnhart v. Ripka](#), 297 S.W.2d 787 (Mo. Ct. App. 1956); [South Carolina Telecommunications Group Holdings v. Miller Pipeline LLC](#), 788 S.E.2d 634 (N.C. Ct. App. 2016); [Craig Wrecking Co. v. S.G. Loewendick & Sons, Inc.](#), 38 Ohio App. 3d 79, 526 N.E.2d 321

(10th Dist. Franklin County 1987); *Lane v. Mims*, 221 S.C. 236, 70 S.E.2d 244 (1952); *Belcher v. Greer*, 181 W. Va. 196, 382 S.E.2d 33 (1989).

2 *Jaycox v. E.M. Harris Bldg. Co.*, 754 S.W.2d 931 (Mo. Ct. App. E.D. 1988) (equitable title rested on executory contract conferring no possessory right).

3 *Gilbert v. McDonald*, 94 Minn. 289, 102 N.W. 712 (1905); *Elk Garden Big Vein Coal Min. Co. v. Gerstell*, 95 W. Va. 471, 121 S.E. 569, 33 A.L.R. 298 (1924).

4 *Milton v. Puffer*, 207 Mass. 416, 93 N.E. 634 (1911); *Matthews v. James Lumber Co.*, 187 N.C. 651, 122 S.E. 480 (1924).

As to what constitutes a continuous trespass, see § 21.

5 *Regan v. Cherry Corp.*, 706 F. Supp. 145 (D.R.I. 1989); *Avatar Properties, Inc. v. Boney*, 494 So. 2d 289 (Fla. 2d DCA 1986).

6 *Irvine v. City of Oelwein*, 170 Iowa 653, 150 N.W. 674 (1915); *Bowman v. Hibbard*, 314 Ky. 688, 236 S.W.2d 938 (1951); *Lancaster v. Connecticut Mut. Life Ins. Co.*, 92 Mo. 460, 5 S.W. 23 (1887).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(2) Actual Possession

§ 33. Acts constituting plaintiff's possession of property trespassed on

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Actual possession may be shown by acts of ownership or dominion,¹ or exclusive possession and control of the land,² such as entry³ and peaceable possession⁴ for a number of years at the time of the defendant's intrusion. Possession in accordance with a license agreement is sufficient.⁵ One who has contracted to erect a building on state property does not, however, have possession of the premises during the progress of the work of a type that authorizes maintaining a trespass action, if state agents enter the property and dispossess the contractor.⁶

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Footnotes

- 1 [Pearl v. Pic Walsh Freight Co.](#), 112 Ohio App. 11, 15 Ohio Op. 2d 338, 168 N.E.2d 571 (1st Dist. Hamilton County 1960).
- 2 [Boyne v. Town of Glastonbury](#), 110 Conn. App. 591, 955 A.2d 645 (2008).
- 3 [Firmont v. Bryden](#), 54 A.D.2d 796, 387 N.Y.S.2d 737 (3d Dep't 1976).
- 4 [Ballard v. Mook](#), 550 So. 2d 1208 (La. Ct. App. 4th Cir. 1989), writ denied, 556 So. 2d 1283 (La. 1990).
- 5 [Maintenance Equipment Co., Inc. v. Godley Builders](#), 107 N.C. App. 343, 420 S.E.2d 199 (1992).
- 6 [Caldwell v. Donaghey](#), 108 Ark. 60, 156 S.W. 839 (1913).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(2) Actual Possession

§ 34. Ownership of property at issue not required for trespass claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 25](#) (Complaint, petition, or declaration—Allegation—Adverse possession)

[Am. Jur. Pleading and Practice Forms, Trespass § 26](#) (Complaint, petition or declaration—Allegation—Possession of land as tenant)

A trespass claim does not require ownership of the property at issue; the right to possess it is generally sufficient,¹ although it has been stated that to recover for a trespass, the plaintiff must have title.² It has also been said that the plaintiff must own or have a lawful right to possess the real property.³ Actual possession of real estate, without title or with a defective title, is always sufficient to sustain an action of trespass to real property against one not having a superior right.⁴

Generally, the plaintiff's title is not necessary to maintain an action for trespass to real property, where the evidence shows bona fide possession under a claim or color of right.⁵ An action for trespass is available even to one who is only a possessor of the property, even against the owner, where the possessor is considered provisionally as the owner of the property until the true

owner's right is established.⁶ A landlord who has granted possession to a tenant for a definite term does not have an immediate right of possession and may not maintain an action for trespass during the term of the lease.⁷

One in adverse possession of land under a claim of title may maintain trespass against another having no superior right of possession.⁸

Actual possession is not sufficient in itself to sustain a trespass action if the plaintiff only has an equitable title, and the equitable title must be invoked.⁹

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Footnotes

- 1 [Special Force Ministries v. WCCO Television](#), 584 N.W.2d 789 (Minn. Ct. App. 1998).
- 2 [Difronzo v. Village of Port Sanilac](#), 166 Mich. App. 148, 419 N.W.2d 756 (1988).
- 3 [State ex rel. Rhodes v. Simpson](#), 325 N.C. 514, 385 S.E.2d 329 (1989); [Patel v. City Of Everman](#), 179 S.W.3d 1 (Tex. App. Tyler 2004).
As to whether legal title gives rise to constructive possession, see § 37.
- 4 [Rosenthal v. City of Crystal Lake](#), 171 Ill. App. 3d 428, 121 Ill. Dec. 869, 525 N.E.2d 1176 (2d Dist. 1988); [Ballard v. Mook](#), 550 So. 2d 1208 (La. Ct. App. 4th Cir. 1989), writ denied, 556 So. 2d 1283 (La. 1990); [Firmant v. Bryden](#), 54 A.D.2d 796, 387 N.Y.S.2d 737 (3d Dep't 1976); [Bass v. Planned Management Services, Inc.](#), 761 P.2d 566 (Utah 1988).
- 5 [Beaufort Land & Investment Co. v. New River Lumber Co.](#), 86 S.C. 358, 68 S.E. 637 (1910); [Kunkel v. Utah Lumber Co.](#), 29 Utah 13, 81 P. 897 (1905).
- 6 [Ballard v. Mook](#), 550 So. 2d 1208 (La. Ct. App. 4th Cir. 1989), writ denied, 556 So. 2d 1283 (La. 1990); [Northfield Park Associates v. Northeast Ohio Harness](#), 36 Ohio App. 3d 14, 521 N.E.2d 466 (8th Dist. Cuyahoga County 1987).
- 7 [AmSouth Bank, N.A. v. City of Mobile](#), 500 So. 2d 1072 (Ala. 1986).
As to the landlord's right to enter and entry not within that right constituting a trespass, see [Am. Jur. 2d, Landlord and Tenant](#) § 391.
- 8 [Carson v. Turk](#), 146 Ky. 733, 143 S.W. 393 (1912).
As to what constitutes actual possession for purposes of adverse possession, see [Am. Jur. 2d, Adverse Possession](#) §§ 16 to 24.
As to the required duration of possession, see [Am. Jur. 2d, Adverse Possession](#) § 12.
- 9 [Foster Lumber Co. v. Arkansas Valley & W. Ry. Co.](#), 20 Okla. 583, 95 P. 224 (1908), aff'd on reh'g, 1909 OK 49, 20 Okla. 583, 100 P. 1110 (1909); [Clay v. City of St. Albans](#), 43 W. Va. 539, 27 S.E. 368 (1897).
As to equitable title effecting constructive possession, see § 38.

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(2) Actual Possession

§ 35. Possession without right as supporting trespass

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

A possessor without a claim of right in real property may maintain trespass against anyone who unlawfully disturbs his or her possession,¹ except against the lawful owner.² The defendant in such an action may not defend based on the title of a third person with whom there is no privity or connection.³

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Footnotes

- ¹ [Harrington v. Chavez](#), 1921-NMSC-028, 27 N.M. 67, 196 P. 320 (1921); [Bileu v. Paisley](#), 18 Or. 47, 21 P. 934 (1889).
- ² [Lambert v. Rainbolt](#), 1952 OK 412, 207 Okla. 451, 250 P.2d 459 (1952).
- ³ § 65.

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(3) Constructive Possession

§ 36. Plaintiff's constructive possession of property trespassed on, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 24](#) (Complaint, petition, or declaration—Allegation—Constructive possession of vacant land by owner of legal title)

The possession required to maintain an action in trespass does not mean the occupancy of the property in question; constructive possession is sufficient.¹ Constructive possession requires proof that the plaintiff was the owner of the land and that no one else had possession.²

Definition:

By occupancy is meant such acts done upon the land as manifest a claim to exclusive control of the land, and indicate to the public that the person who has done them has appropriated it.³



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Footnotes

- 1 [Jaycox v. E.M. Harris Bldg. Co., 754 S.W.2d 931 \(Mo. Ct. App. E.D. 1988\).](#)
- 2 [Boyne v. Town of Glastonbury, 110 Conn. App. 591, 955 A.2d 645 \(2008\).](#)
- 3 [Restatement Second, Torts § 157, comment a.](#)

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(3) Constructive Possession

§ 37. Significance of title as to constructive possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 24](#) (Complaint, petition, or declaration—Allegation—Constructive possession of vacant land by owner of legal title)

The constructive possession resulting from legal title is sufficient to enable the owner to maintain an action for trespass where the property is not in the actual possession of anyone,¹ or where the person in actual possession is the mere agent or representative of the legal title owner.² However, legal title does not result in constructive possession of real property actually occupied by another, so as to enable the owner to maintain trespass against such a possessor.³ Where land lies so little above water that it is uninhabitable, and valuable only for the timber on it, only that possession of which the land is capable must be combined with the title.⁴

The plaintiff must have been the owner when the trespass occurred.⁵

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Footnotes

- 1 [Jaycox v. E.M. Harris Bldg. Co.](#), 754 S.W.2d 931 (Mo. Ct. App. E.D. 1988); [Daniels v. Coleman](#), 253 S.C. 218, 169 S.E.2d 593 (1969); [Lane v. Mims](#), 221 S.C. 236, 70 S.E.2d 244 (1952).
- 2 [Daniels v. Coleman](#), 253 S.C. 218, 169 S.E.2d 593 (1969).
- 3 [Daniels v. Coleman](#), 253 S.C. 218, 169 S.E.2d 593 (1969).
As to definition of "occupancy" of real property, see § 36.
- 4 [Carson v. Turk](#), 146 Ky. 733, 143 S.W. 393 (1912).
- 5 [Woodring v. Swieter](#), 180 N.C. App. 362, 637 S.E.2d 269 (2006).

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II. Particular Types of Trespass

B. Trespass to Real Property

2. Elements

c. Plaintiff's Possession

(3) Constructive Possession

§ 38. Equitable title as creating constructive possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  10

The only function of equitable title is to create constructive possession of real property, which, in the absence of actual possession by the plaintiff, is essential to the maintenance of an action for trespass.¹

One claiming equitable title to real property under an executory contract conferring no right of possession may not maintain a trespass action against the owner of the legal title, or one acting under that person's authority, before payment of the purchase price.² Although it has been stated that real estate contracts are clearly transfers of an equitable interest in property and the vendee has the right to possession of the land, the right to control, and the right to sue for trespass,³ this usually depends on the vendee's right of possession under the contract.⁴

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Footnotes

- ¹ [Jaycox v. E.M. Harris Bldg. Co., 754 S.W.2d 931 \(Mo. Ct. App. E.D. 1988\).](#)
- ² [Jaycox v. E.M. Harris Bldg. Co., 754 S.W.2d 931 \(Mo. Ct. App. E.D. 1988\).](#)
- ³ [Chelan County v. Wilson, 49 Wash. App. 628, 744 P.2d 1106 \(Div. 3 1987\).](#)
- ⁴ [Newman v. Mountain Park Land Co., 85 Ark. 208, 107 S.W. 391 \(1908\).](#)

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II. Particular Types of Trespass

B. Trespass to Real Property

3. Particular Acts or Omissions

a. Entry by Persons or Failure to Leave

§ 39. Trespass by failure to relinquish possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Forms

[Am. Jur. Legal Forms 2d § 249:3](#) (Notice to trespasser—Request to discontinue trespass)

A person commits a trespass to realty merely by wrongfully failing to leave the premises after being notified to do so.¹ Even if the entry was permitted, one becomes a trespasser after refusing to leave after permission to remain has been withdrawn.² One who remains in a home after being directed to leave is guilty of a wrongful entry and becomes a trespasser, even though the original entry was peaceful and authorized, and a homeowner may use such force as is reasonably necessary to eject that person.³ However, even one rightfully ordered to leave is allowed the time needed to exit.⁴

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Footnotes

¹ [Mackenzie v. Minis](#), 132 Ga. 323, 63 S.E. 900 (1909) (discharged employee who would not leave house on employer's premises); [State v. O'Brien](#), 784 S.W.2d 187 (Mo. Ct. App. E.D. 1989).

A lessee became a trespasser when it was aware that it agreed to evacuate the property by a certain date, but did not do so, intentionally and without justification. [Trustco Bank New York v. S/N Precision Enterprises Inc.](#), 234 A.D.2d 665, 650 N.Y.S.2d 846 (3d Dep't 1996).

2 [Long Island Gynecological Services, P.C. v. Murphy](#), 298 A.D.2d 504, 748 N.Y.S.2d 776 (2d Dep't 2002).

3 [Taylor v. Action Household Rentals, Inc.](#), 351 So. 2d 865 (La. Ct. App. 2d Cir. 1977).

4 [Bullock v. Jeon](#), 226 Ga. App. 875, 487 S.E.2d 692 (1997).

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75 Am. Jur. 2d Trespass § 40

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Trespass

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II. Particular Types of Trespass

B. Trespass to Real Property

3. Particular Acts or Omissions

a. Entry by Persons or Failure to Leave

§ 40. Entry for purpose of transacting business

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12, 13

Opening an establishment to transact business with the public is permission to enter, unless forbidden.¹ An invitation to conduct business presupposes that the conduct of persons coming to the premises will be in keeping with that purpose.² The person in lawful possession of the property has the right to determine whom to invite, the scope of the invitation, and the circumstances under which the invitation may be revoked.³ Once the proprietor requests that a person leave, that individual has no legal right to remain.⁴ A business invitee whose conduct justifies revoking the invitation to remain, and remains after the owner's request to leave, becomes a trespasser,⁵ and the owner then has a right to use force, if necessary, to remove that person.⁶ Furthermore, the fact that a building's tenants issue a specific invitation to certain members of the public does not mean all members of the public have a license to enter; if the invitation to enter is limited either expressly or impliedly from the circumstances, then the proprietor has a right to the protection afforded by the trespass laws.⁷

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Footnotes

- ¹ [City of Sunnyside v. Lopez](#), 50 Wash. App. 786, 751 P.2d 313 (Div. 3 1988).
As to opening an area to the public constituting implied consent, see § 76.
- ² [Corn v. State](#), 332 So. 2d 4 (Fla. 1976).
- ³ [State v. Steinmann](#), 20 Conn. App. 599, 569 A.2d 557 (1990); [Corn v. State](#), 332 So. 2d 4 (Fla. 1976).
- ⁴ [Corn v. State](#), 332 So. 2d 4 (Fla. 1976).

- 5 [St. Louis County v. Stone](#), 776 S.W.2d 885 (Mo. Ct. App. E.D. 1989); [Com. v. Johnston](#), 438 Pa. 485, 263 A.2d 376, 41 A.L.R.3d 576 (1970).
- 6 [Com. v. Johnston](#), 438 Pa. 485, 263 A.2d 376, 41 A.L.R.3d 576 (1970).
- 7 As to revocation of implied consent or license for breach of condition, see [§ 80](#).
[City of Sunnyside v. Lopez](#), 50 Wash. App. 786, 751 P.2d 313 (Div. 3 1988) (medical center).

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75 Am. Jur. 2d Trespass § 41

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II. Particular Types of Trespass

B. Trespass to Real Property

3. Particular Acts or Omissions

a. Entry by Persons or Failure to Leave

§ 41. Entry for recreational purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

A.L.R. Library

[Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569](#)

A person who intrudes on private property, without the owner's permission, for fishing or other recreational purposes, commits a trespass.¹

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¹ [People v. Emmert](#), 198 Colo. 137, 597 P.2d 1025, 6 A.L.R.4th 1016 (1979) (floating a raft on a river); [Berger Farms, Inc. v. Estes](#), 662 N.E.2d 654 (Ind. Ct. App. 1996) (used plaintiff's portion of lake).

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II. Particular Types of Trespass

B. Trespass to Real Property

3. Particular Acts or Omissions

b. Failure to Remove Object

§ 42. Trespass by failure to remove object, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  13

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 45](#) (Complaint, petition or declaration—Allegation—Unauthorized use of land—For deposit of materials)

[Am. Jur. Pleading and Practice Forms, Trespass § 46](#) (Complaint, petition or declaration—Allegation—Unauthorized use of land—For storage)

A trespass may be committed by the continued presence on the land of a structure or personal property that the actor, or a predecessor in interest,¹ has placed there,² even where the thing was placed onto the land with the landowner's consent, but not promptly removed after that consent is withdrawn³ or effectively terminated.⁴ This rule also encompasses objects placed on the land pursuant to a privilege conferred on the actor irrespective of the possessor's consent, if the actor fails to remove it after the privilege has been terminated, by having its purpose accomplished, or otherwise.⁵

A continuing trespass occurs when one erects a structure or places an object on another's land and fails to remove it.⁶ Thus, a licensee's failure to remove property upon the expiration or revocation of the license constitutes a continuing trespass.⁷

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Footnotes

- 1 [Restatement Second, Torts §§ 160, 161\(2\).](#)
- 2 [Restatement Second, Torts § 160.](#)
- 3 [Garden Street Iron & Metal, Inc. v. Tanner, 789 So. 2d 1148 \(Fla. 2d DCA 2001\).](#)
[As to the privilege to remove the property, see § 83.](#)
- 4 [Anchorage Yacht Haven, Inc. v. Robertson, 264 So. 2d 57 \(Fla. 4th DCA 1972\).](#)
[An outdoor advertising company had the duty to remove a sign's supporting structure when it removed the sign itself, where the landowner's predecessor conditioned consent to place the supporting structure on its property on it being used to support the sign, and the company's refusal to remove the structure constituted a trespass. Manor Enterprises, Inc. v. Vivid, Inc., 228 Wis. 2d 382, 596 N.W.2d 828 \(Ct. App. 1999\).](#)
- 5 [Restatement Second, Torts § 160.](#)
- 6 [Labatut v. City of New Orleans, 686 So. 2d 1038 \(La. Ct. App. 4th Cir. 1996\).](#)
[As to continuing trespasses, generally, see § 21.](#)
- 7 [Potomac Elec. Power Co. v. Classic Community Corp., 382 Md. 581, 856 A.2d 660 \(2004\).](#)

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B. Trespass to Real Property

3. Particular Acts or Omissions

b. Failure to Remove Object

§ 43. Effect of tortious placement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  13

The continued presence of a structure or object tortiously placed on land constitutes a trespass, regardless whether the actor has the ability to remove it.¹ An actor's failure to remove a thing tortiously placed on the land constitutes a continuing trespass for the entire time during which it is on the land.² For instance, placing a fence on the plaintiffs' property is an act of trespass that continues for as long as it remains.³ One who knows of an adverse claim to land proceeds at one's own peril by proceeding, in the face of a protest, by placing a structure on the land.⁴

Comment:

The liability of one who has tortiously placed a thing on the property of another is more stringent than the liability of that person's transferee, or the liability of one who has placed the thing on another's property with a revocable license; in the latter cases, the actor violates only the duty to remove the thing, and if removal is impossible, is excused from liability for failing to perform it.⁵

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Footnotes

- 1 JBG/Twinbrook Metro Ltd. Partnership v. Wheeler, 346 Md. 601, 697 A.2d 898 (1997).
Restatement Second, Torts § 161.
- 2 Regan v. Cherry Corp., 706 F. Supp. 145 (D.R.I. 1989); Hoery v. U.S., 64 P.3d 214 (Colo. 2003); Rosenthal v. City of Crystal Lake, 171 Ill. App. 3d 428, 121 Ill. Dec. 869, 525 N.E.2d 1176 (2d Dist. 1988) (storm sewer).
As to continuing trespasses, generally, see § 21.
- 3 Owens v. Smith, 541 So. 2d 950 (La. Ct. App. 2d Cir. 1989).
- 4 Brinkley v. Brinkley, 174 Ill. App. 3d 705, 124 Ill. Dec. 353, 529 N.E.2d 70 (5th Dist. 1988).
- 5 Restatement Second, Torts § 161, comment c.

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B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 44. Trespass by invasion of matter onto property, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 45](#) (Complaint, petition, or declaration—Allegation—Unauthorized use of land—For deposit of materials)

A physical invasion of the property of another may be accomplished by the casting of substances or objects on the plaintiff's property from outside its boundaries,¹ so long as the intrusion is physical and tangible.² It is not necessary that the foreign matter be thrown directly and immediately upon another's land; it is enough that an act is done with knowledge that it will, to a substantial certainty, result in the entry of foreign matter.³ It must be established that the defendant intended to have foreign matter intrude upon another's land, or that the defendant's act was done with knowledge that it would, to a substantial certainty, have that result.⁴ A continuing trespass persists until the intruding substance is removed.⁵

Comment:

The actor, without entering the land, may invade another's interest in exclusive possession by throwing, propelling, or placing a thing either on or beneath the surface of land, or into the air space above it.⁶ Thus, in the absence of the possessor's consent, it is an actionable trespass to throw rubbish on another's land, even if the possessor uses it as a dump, or to fire projectiles or to fly a kite into the air above it, even though no harm is done to the land or to the possessor's enjoyment of it.⁷

CUMULATIVE SUPPLEMENT

Cases:

Continued use of gravel driveway on neighbor's property by landowners, who did not have prescriptive easement, constituted trespass. [Ga. Code Ann. §§ 44-9-1, 51-9-1](#). [Floyd v. Chapman](#), 353 Ga. App. 434, 838 S.E.2d 99 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Thrash v. Credit Acceptance Corp.](#), 821 So. 2d 968, 48 U.C.C. Rep. Serv. 2d 1224 (Ala. 2001); [Wilson v. Interlake Steel Co.](#), 32 Cal. 3d 229, 185 Cal. Rptr. 280, 649 P.2d 922 (1982); [Morrison v. Smith](#), 757 S.W.2d 678 (Tenn. Ct. App. 1988); [Aguilar v. Trujillo](#), 162 S.W.3d 839 (Tex. App. El Paso 2005).
- 2 [§ 29](#).
- 3 [Borland v. Sanders Lead Co., Inc.](#), 369 So. 2d 523, 2 A.L.R.4th 1042 (Ala. 1979); [Lambert v. Holmberg](#), 271 Neb. 443, 712 N.W.2d 268 (2006).
- 4 [Williamson v. City of Hays](#), 275 Kan. 300, 64 P.3d 364 (2003).
- 5 As to the intent to enter land, generally, see [§ 23](#).
[Wallace v. Lewis County](#), 134 Wash. App. 1, 137 P.3d 101 (Div. 2 2006), as corrected, (Aug. 15, 2006).
- 6 As to continuing trespasses, generally, see [§ 21](#).
[Public Service Co. of Colorado v. Van Wyk](#), 27 P.3d 377 (Colo. 2001); [Lambert v. Holmberg](#), 271 Neb. 443, 712 N.W.2d 268 (2006).
- 7 [Restatement Second, Torts § 158](#), comment h.
[Restatement Second, Torts § 158](#), comment i.

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II. Particular Types of Trespass

B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 45. Trespass by discharge of particulate and polluting matter

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

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[Recovery in trespass for injury to land caused by airborne pollutants, 2 A.L.R.4th 1054](#)

A trespass may be committed by discharging foreign polluting matter affecting other property.¹ For instance, there is a trespass if smoke or a polluting substance emitted from a defendant's operation causes that substance to be deposited on the plaintiff's property, thus interfering with the plaintiff's exclusive possessory interest, by causing substantial damage to the property.² Recovery is allowed in trespass actions, predicated upon emissions that result in the deposit of particulate matter upon the plaintiff's property or actual physical damage to it.³ The rule is not universal, since in some states the invasion of particulate matter does not, as a matter of law, constitute a trespass, and therefore pesticide drift onto an organic farm from a neighboring farm did not constitute a trespass.⁴ Likewise, it has been held that the settling of dust and other substances onto property from a cement plant is not a trespass upon the premises, where it is not claimed that the operator of the plant entered upon the close of the landowner or in any way interfered with the physical occupancy of the premises.⁵

Cases involving airborne particulates may come within the rule applicable to intangible intrusions,⁶ and the plaintiff has the burden to prove that a chemical discharge resulted in an actual physical invasion of the subject property, to maintain a trespass action.⁷ It is also necessary to show that airborne dust caused damage to the property to establish a claim for trespass.⁸

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Footnotes

- 1 [Borland v. Sanders Lead Co., Inc.](#), 369 So. 2d 523, 2 A.L.R.4th 1042 (Ala. 1979); [Roberts v. Permanente Corp.](#), 188 Cal. App. 2d 526, 10 Cal. Rptr. 519 (1st Dist. 1961); [Sheppard Envelope Co. v. Arcade Malleable Iron Co.](#), 335 Mass. 180, 138 N.E.2d 777 (1956); [Hall v. De Weld Mica Corp.](#), 244 N.C. 182, 93 S.E.2d 56 (1956); [Martin v. Reynolds Metals Co.](#), 221 Or. 86, 342 P.2d 790 (1959); [Sciscoe v. Enbridge Gathering \(North Texas\), L.P.](#), 519 S.W.3d 171 (Tex. App. Amarillo 2015), review granted, (Jan. 20, 2017) and judgment rev'd, 519 S.W.3d 605 (Tex. 2017).
As to trespass resulting from an indirect force, generally, see § 28.
As to basing recovery in pollution cases on various theories, including trespass, see [Am. Jur. 2d, Pollution Control](#) §§ 1852, 1915.
- 2 [Born v. Exxon Corp.](#), 388 So. 2d 933 (Ala. 1980) (stating that an alternative remedy in nuisance may coexist); [Martin v. Reynolds Metals Co.](#), 221 Or. 86, 342 P.2d 790 (1959) (gases from aluminum plant made plaintiff's land unfit to raise livestock).
- 3 [Born v. Exxon Corp.](#), 388 So. 2d 933 (Ala. 1980); [Wilson v. Interlake Steel Co.](#), 32 Cal. 3d 229, 185 Cal. Rptr. 280, 649 P.2d 922 (1982).
- 4 [Johnson v. Paynesville Farmers Union Co-op. Oil Co.](#), 817 N.W.2d 693 (Minn. 2012) (although finding a nuisance claim may have been made).
- 5 [Thackery v. Union Portland Cement Co.](#), 64 Utah 437, 231 P. 813 (1924).
- 6 [Adams v. Cleveland-Cliffs Iron Co.](#), 237 Mich. App. 51, 602 N.W.2d 215 (1999).
As to the requirement that the intrusion be physical and tangible, see § 29.
- 7 [Prescott v. Leaf River Forest Products, Inc.](#), 740 So. 2d 301 (Miss. 1999).
- 8 [Karpiak v. Russo](#), 450 Pa. Super. 471, 676 A.2d 270 (1996).

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B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 46. Trespass caused by water

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

The concept of trespass includes a trespass caused by water.¹ Flooding of the plaintiff's land because of the improper construction of highway embankments constitutes a trespass.² A trespass is committed when the defendant's affirmative act results in the flooding of the plaintiff's land and the destruction of crops.³ There was an unauthorized entry upon land that constituted a continuing trespass, where effluent from a waste water treatment plant caused erosion of the plaintiffs' private ditch, and sewage constituents settled on the plaintiff's property.⁴ However, because a trespass to real property requires the intentional entry onto the land of another,⁵ floods resulting from a severe storm do not constitute a trespass.⁶

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Footnotes

- ¹ [Phillips v. King County](#), 136 Wash. 2d 946, 968 P.2d 871 (1998).
Water and debris cast upon the lands of another is actionable as a trespass. [Stewart v. State](#), 248 A.D.2d 761, 669 N.Y.S.2d 723 (3d Dep't 1998).
As to trespasses involving water and water rights, generally, see [Am. Jur. 2d, Waters](#) §§ 194, 250, 269, 380.
- ² [Viestenz v. Arthur Tp.](#), 78 N.D. 1029, 54 N.W.2d 572 (1952).
- ³ [Western Union Telegraph Co. v. Bush](#), 191 Ark. 1085, 89 S.W.2d 723, 103 A.L.R. 367 (1935).
As to an action in trespass as a remedy for injury to crops, see [Am. Jur. 2d, Crops](#) § 57.
- ⁴ [Ritchhart v. Gleason](#), 109 Ohio App. 3d 652, 672 N.E.2d 1064 (4th Dist. Ross County 1996).
- ⁵ § 23.

6 Moulton v. Groveton Papers Co., 112 N.H. 50, 289 A.2d 68, 51 A.L.R.3d 957 (1972); Hughes v. King County, 42 Wash. App. 776, 714 P.2d 316 (Div. 1 1986).

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B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 47. Trespass caused by placement of structures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

Forms

[Am. Jur. Pleading and Practice Forms, Trespass § 43](#) (Complaint, petition, or declaration—Allegation—Encroachment)

It has been said that the term "entry by a person" within the definition of trespass includes entry by a structure as a result of a person's actions.¹ Acts constituting a continuing trespass² include building upon another's land without permission or right,³ and maintaining a structure on another's property.⁴ This may include projecting shutters.⁵

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Footnotes

- ¹ [Rosenfeld v. Thoele](#), 28 S.W.3d 446 (Mo. Ct. App. E.D. 2000).
- ² [§ 21](#).
- ³ [Young v. Lica](#), 156 N.C. App. 301, 576 S.E.2d 421 (2003).
- ⁴ [Garrison v. Alabama Power Co.](#), 807 So. 2d 567 (Ala. Civ. App. 2001).

5 [Homewood Realty Corp. v. Safe Deposit & Trust Co. of Baltimore, 160 Md. 457, 154 A. 58, 78 A.L.R. 8 \(1931\).](#)

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B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 48. Trespass caused by noise or vibrations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

A.L.R. Library

[Liability for damage to land or its occupants from dust, gases, odors, vibration, or the like, occasioned by defendant's continuous vehicular use of adjoining or nearby public highway, 25 A.L.R.4th 1192](#)

A cause of action for trespass requires more than just a showing of interference by noise and sound.¹ It has been said that noise or vibrations do not give rise to an action in trespass since they are clearly not tangible objects.² A plaintiff may not maintain a trespass action for discomfort and annoyance caused by the generation of noise that does not cause any physical damage to the property.³ However, an actionable trespass may be committed indirectly through concussions or vibrations activated by a defendant's conduct.⁴ Thus, although a mere concussion caused by blasting operations does not constitute a trespass,⁵ recovery is allowed in trespass actions predicated upon noise that results in actual physical damage.⁶ For instance, vibrations caused by heavy industrial equipment in a building may give rise to an action in trespass where nearby property is damaged by them.⁷ Recovery has also been allowed in trespass actions, predicated upon noise and vibration intrusions that result in the deposit of particulate matter upon the plaintiff's property or on actual physical damage to it.⁸

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Footnotes

- 1 Goerlitz v. City of Maryville, 333 S.W.3d 450 (Mo. 2011).
- 2 Adams v. Cleveland-Cliffs Iron Co., 237 Mich. App. 51, 602 N.W.2d 215 (1999).
As to the requirement that the intrusion be tangible, see § 29.
- 3 Wilson v. Interlake Steel Co., 32 Cal. 3d 229, 185 Cal. Rptr. 280, 649 P.2d 922 (1982).
- 4 Smith v. Lockheed Propulsion Co., 247 Cal. App. 2d 774, 56 Cal. Rptr. 128, 29 A.L.R.3d 538 (4th Dist. 1967).
- 5 Borland v. Sanders Lead Co., Inc., 369 So. 2d 523, 2 A.L.R.4th 1042 (Ala. 1979).
As to liability for damage from concussions or vibrations caused by blasting, generally, see Am. Jur. 2d, Explosions and Explosives § 69.
- 6 Born v. Exxon Corp., 388 So. 2d 933 (Ala. 1980); Wilson v. Interlake Steel Co., 32 Cal. 3d 229, 185 Cal. Rptr. 280, 649 P.2d 922 (1982).
- 7 Staples v. Hoefke, 189 Cal. App. 3d 1397, 235 Cal. Rptr. 165 (2d Dist. 1987).
- 8 Born v. Exxon Corp., 388 So. 2d 933 (Ala. 1980); Wilson v. Interlake Steel Co., 32 Cal. 3d 229, 185 Cal. Rptr. 280, 649 P.2d 922 (1982).

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B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 49. Trespass caused by shooting

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Shooting across the land of another is a trespass.¹ This includes the invasion of the possessor's property by pellets falling on the land from an air gun² or shotgun.³

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Footnotes

- ¹ [Herrin v. Sutherland](#), 74 Mont. 587, 241 P. 328, 42 A.L.R. 937 (1925); [Dewey v. Gardner](#), 248 A.D.2d 876, 669 N.Y.S.2d 766 (3d Dep't 1998); [In re Mueller's Will](#), 188 Wis. 183, 205 N.W. 814, 42 A.L.R. 951 (1925). The entry of bullets over and onto adjacent private property from a gun club, without the owners' permission, constituted a trespass. [Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.](#), 624 N.W.2d 796 (Minn. Ct. App. 2001).
- ² [Munro v. Williams](#), 94 Conn. 377, 109 A. 129, 13 A.L.R. 508 (1920); [Digirolamo v. Philadelphia Gun Club](#), 371 Pa. 40, 89 A.2d 357 (1952).
- ³ [Whittaker v. Stangvick](#), 100 Minn. 386, 111 N.W. 295 (1907).

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II. Particular Types of Trespass

B. Trespass to Real Property

3. Particular Acts or Omissions

c. Invasion of Matter Onto Property

§ 50. Trespass caused by other types of objects

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Trespass](#)  12

A cause of action for trespass may be established by proof that the plaintiff owned the land in question and that entry upon it by a telephone company, which installed a fiber optic cable on the land, was unauthorized.¹ However, the installation of a television cable three-fourths of an inch in diameter, buried 30 inches below the plaintiff's land, was not such an additional or substantial burden on the property as to constitute a trespass.²

Balls kicked or thrown onto private property from a public playground, causing substantial damage, constituted a trespass.³ The continuing and frequent invasion of golf balls from a private golf course onto homeowners' properties, adjacent to the course, is a continuing trespass.⁴

While there is some authority that overhanging trees do not constitute a trespass,⁵ it was elsewhere held that the continuing presence of branches and trees overhanging a person's property is a continuing trespass.⁶

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Footnotes

- ¹ [Calumet Nat. Bank as Trustee Under Trust No. P-3362, Dated Sept. 1, 1986 v. American Tel. & Tel. Co., 682 N.E.2d 785 \(Ind. 1997\).](#)
- ² [Shaffer v. Video Display Corp., 43 Ohio App. 3d 49, 539 N.E.2d 170 \(3d Dist. Shelby County 1988\)](#) (cable was buried along a highway right-of-way pursuant to a county permit).

3 [Hennessy v. City of Boston](#), 265 Mass. 559, 164 N.E. 470, 62 A.L.R. 780 (1929).

4 [Amaral v. Cuppels](#), 64 Mass. App. Ct. 85, 831 N.E.2d 915 (2005).

5 [Flatley v. Hartmann](#), 138 A.D.2d 345, 525 N.Y.S.2d 637 (2d Dep't 1988).

6 [Jones v. Wagner](#), 425 Pa. Super. 102, 624 A.2d 166 (1993).

As to liability relating to trees and bushes near or on a property line, see [Am. Jur. 2d, Adjoining Landowners](#) §§ 15 to 26.

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75 Am. Jur. 2d Trespass § 51

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II. Particular Types of Trespass

C. Wrongful Act After Rightful Entry; Trespass Ab Initio

§ 51. Trespass by wrongful act after rightful entry, generally

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Where an authority is conferred by law, under which conduct otherwise constituting a trespass may be justified,¹ an abuse of that authority will destroy the privilege and render the act done in excess of authority a trespass ab initio.² This rule operates retrospectively to defeat all acts done under color of lawful authority when that authority is exceeded, and prospectively to prevent the acquisition of any lawful right by the abuse of an authority given for a useful and beneficial purpose.³

Comment:

The doctrine of trespass ab initio is described as a peculiar and anomalous fiction of the early common law, by which one who entered properly upon land in the exercise of a privilege conferred by authority of law, and subsequently abused the privilege by a trespass to person, chattels, or land, became liable not only for the later misconduct, but also forfeited the original lawful entry, to become a trespasser "ab initio" or from the beginning.⁴ However, the doctrine of trespass ab initio has been rejected in favor of the modern rule that one who enters on or takes property under authority or license of the possessor does not become a trespasser ab initio by abusing one's authority.⁵ Further, the Restatement view rejects, as to entries that are originally privileged, the doctrine of trespass ab initio.⁶ Thus, conduct that would otherwise constitute a trespass is not a trespass if it is privileged,⁷ but a failure to leave after permission to remain has been withdrawn becomes a trespass,⁸ and the defendant is liable for tortious acts committed after the privileged entry.⁹

If an easement holder/user exceeds his or her rights, either in the extent or manner of the use, the easement user is guilty of trespass to the extent of the unauthorized use.¹⁰

By giving permission to enter one's property, an individual provides the recipient a license to be on the property.¹¹ When the scope of a license is exceeded or abused, then the acts of the licensee committed in excess of such authority or after the license is revoked may become a trespass for which the licensee may become liable.¹² For example, a license to enter premises for one purpose cannot support remaining on the premises after the purpose has been concluded or entry for a purpose other than that for which the license was granted.¹³ A person lawfully on the property of another as an invitee who uses the property on a venture in his or her own interests and not within the scope of the invitation or for the purpose for which the property was reasonably intended, loses his or her status as an invitee and becomes a trespasser.¹⁴ Likewise, leaving the public premises of a business to venture into a posted nonpublic area changes an invitee into a trespasser.¹⁵

A trespass may occur if the party, entering pursuant to a limited consent, i.e., limited as to purpose or place, proceeds to exceed those limits by divergent conduct on the land of another, as a conditional or restricted consent to enter land creates a privilege to do so only in so far as the condition or restriction is complied with.¹⁶

Although a person who enters an area open to the public at a reasonable time and in a reasonable manner has the implied consent of the owner to enter the premises under a limited privilege, substantial evidence of the stay being prolonged, boisterous conduct, breach of the peace, blocking the entranceways, interference with the public, picketing, or other conduct which would revoke the implied consent of the owner by acts inconsistent with the purposes of the business or facility, causes a trespass.¹⁷

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Footnotes

- 1 §§ 81, 82.
- 2 *State v. Coleman*, 119 Or. 430, 249 P. 1049 (1926); *McClannan v. Chaplain*, 136 Va. 1, 116 S.E. 495 (1923).
- 3 *State v. Coleman*, 119 Or. 430, 249 P. 1049 (1926); *McClannan v. Chaplain*, 136 Va. 1, 116 S.E. 495 (1923).
- 4 *Restatement Second, Torts* § 214, comment e.
- 5 *Simpson v. Phillips Pipe Line Co.*, 603 S.W.2d 307 (Tex. Civ. App. Beaumont 1980), writ refused n.r.e., (Dec. 17, 1980).
- 6 *Restatement Second, Torts* § 136 comment b (trespass to person); *Restatement Second, Torts* § 214, comment e (trespass to real property); *Restatement Second, Torts* § 278, comment c (trespass to chattel).
- 7 § 71.
- 8 § 39.
- 9 § 53.
- 10 *Chabad-Lubavitch of Michigan v. Schuchman*, 305 Mich. App. 337, 853 N.W.2d 390 (2014), judgment rev'd in part on other grounds, appeal denied in part on other grounds, 862 N.W.2d 648 (Mich. 2015), cert. denied, 136 S. Ct. 2449, 195 L. Ed. 2d 264 (2016); *Relaxation, Inc. v. RIS, Inc.*, 452 S.W.3d 743 (Mo. Ct. App. W.D. 2015).
- 11 *State v. Zembreski*, 445 N.J. Super. 412, 138 A.3d 583 (App. Div. 2016).

- 12 [State v. Girardier](#), 484 S.W.3d 356 (Mo. Ct. App. E.D. 2015), reh'g and/or transfer denied, (Jan. 25, 2016)
and transfer denied, (Apr. 5, 2016).
- 13 [State v. Zembreski](#), 445 N.J. Super. 412, 138 A.3d 583 (App. Div. 2016).
- 14 [United Food and Commercial Workers Intern. Union v. Wal-Mart Stores, Inc.](#), 430 S.W.3d 508 (Tex. App.
Fort Worth 2014).
- 15 [State v. Girardier](#), 484 S.W.3d 356 (Mo. Ct. App. E.D. 2015), reh'g and/or transfer denied, (Jan. 25, 2016)
and transfer denied, (Apr. 5, 2016).
- 16 [Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach](#), 232 Cal. App. 4th 1171, 181 Cal. Rptr. 3d
577 (5th Dist. 2014).
- 17 [State v. Girardier](#), 484 S.W.3d 356 (Mo. Ct. App. E.D. 2015), reh'g and/or transfer denied, (Jan. 25, 2016)
and transfer denied, (Apr. 5, 2016).

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C. Wrongful Act After Rightful Entry; Trespass Ab Initio

§ 52. Requisites of liability for trespass by wrongful act after rightful entry

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To constitute a trespass ab initio, where that doctrine is still recognized,¹ the authority abused must be an authority given by law and not by an individual,² and there must be some positive act of misconduct, and not a mere omission or neglect of duty.³

Observation:

One cannot be guilty of a trespass by illegal entry if the person's wrong is committed subsequent to a rightful entry where such entry was by permission of the owner; thus, a right of entry constitutes an absolute defense to an action in trespass based on illegal entry.⁴

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Footnotes

- ¹ § 51.
- ² [Louisville & N.R. Co. v. Bartee](#), 204 Ala. 539, 86 So. 394, 12 A.L.R. 251 (1920); [Sheftall v. Zipperer](#), 133 Ga. 488, 66 S.E. 253 (1909).
- ³ [Louisville & N.R. Co. v. Bartee](#), 204 Ala. 539, 86 So. 394, 12 A.L.R. 251 (1920).

4 [Gavin v. Loeffelbein, 2017 PA Super 130, 161 A.3d 340 \(2017\)](#), appeal granted in part, [174 A.3d 1028 \(Pa. 2017\)](#).

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C. Wrongful Act After Rightful Entry; Trespass Ab Initio

§ 53. Liability for tortious conduct after entry on land

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An actor who has, in an unreasonable manner, exercised any privilege to enter land is subject to liability for any harm to a legally protected interest of another caused by that unreasonable conduct.¹ This rule applies not only where the actor deliberately abuses the privilege by doing an act that the person recognizes as unnecessary, or deliberately does an act that a reasonable person would so recognize, but also where the actor does not use reasonable care to prevent the exercise of the privilege from involving an unreasonable harm to the legally protected interests of others.² It has similarly been said that one who has a legal right to enter the land of another for a particular purpose becomes a trespasser when the person does some act that one has no legal right to do,³ and even an authorized entry can be trespass if a wrongful act is done in excess of and in abuse of the authorization.⁴

Under the modern view,⁵ one who properly enters land in the exercise of any privilege to do so, and thereafter commits an act that is tortious, is subject to liability only for that tortious act, and does not become liable for the original lawful entry, or for lawful acts on the land prior to the tortious conduct.⁶ Thus, where there was no damage from excess use, recovery would not be allowed.⁷

Comment:

However, in any case where the lawful entry upon land is used as a cover for subsequent misconduct, and the entry is for the purpose of taking advantage of the privilege conferred by the authority of law to commit another tort, the actor remains liable, and the subsequent misconduct is evidence bearing on the original intent.⁸

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Footnotes

- 1 [Restatement Second, Torts § 214\(1\).](#)
- 2 [Restatement Second, Torts § 214, comment a.](#)
- 3 [Thrash v. Credit Acceptance Corp.](#), 821 So. 2d 968, 48 U.C.C. Rep. Serv. 2d 1224 (Ala. 2001).
A labor union representative, who enters a job site to engage in lawful union activity, but in fact does not confine oneself to that activity, forfeits the privilege. [In re Catalano](#), 29 Cal. 3d 1, 171 Cal. Rptr. 667, 623 P.2d 228 (1981).
- 4 [Miller v. Brooks](#), 123 N.C. App. 20, 472 S.E.2d 350 (1996).
One who enters another's property under the authority of an express or conditional right, but exceeds that right, becomes a trespasser as to the unauthorized actions. [Murphy v. Fannin County Elec. Co-op., Inc.](#), 957 S.W.2d 900 (Tex. App. Texarkana 1997).
- 5 § 51.
- 6 [Restatement Second, Torts § 214\(2\).](#)
- 7 [Simpson v. Phillips Pipe Line Co.](#), 603 S.W.2d 307 (Tex. Civ. App. Beaumont 1980), writ refused n.r.e., (Dec. 17, 1980).
- 8 [Restatement Second, Torts § 214, comment f.](#)

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C. Wrongful Act After Rightful Entry; Trespass Ab Initio

§ 54. Liability for tortious conduct after privileged dealing with chattel

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One who exercises any privilege to commit an act that would otherwise be a trespass to chattel is subject to liability for any harm to the interest of another in that item, caused by any dealing with it in a manner that is in excess of the privilege or not reasonably necessary to accomplish the purpose for which it is given.¹

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Footnotes

¹ [Restatement Second, Torts § 278\(1\)](#).

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